

National Taxpayer Advocate

# **OBJECTIVES REPORT TO CONGRESS**

Fiscal Year 2022

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## National Taxpayer Advocate's Introductory Remarks

As we look forward and plan our fiscal year (FY) 2022 objectives, this past filing season is still painfully visible in the rearview mirror. It was perhaps the most challenging filing season taxpayers, tax professionals, and the IRS have ever experienced. This past year and the 2021 filing season conjure up every possible cliché for taxpayers, tax professionals, the IRS, and its employees — it was a perfect storm; it was the best of times and the worst of times; patience is a virtue; with experience comes wisdom and with wisdom comes experience; out of the ashes we rise; and we experienced historical highs and lows.

Unlike any prior year, individuals and businesses across this great nation were forced to confront ongoing medical and financial challenges while juggling health and family issues. As a society, we adapted to the COVID-19 challenges by working remotely, attending schools virtually, and generally changing the way we did business and lived our lives. We witnessed the passing of over 600,000 loved ones, friends, and members of our communities; the closure of businesses; and the loss of millions of jobs. We also witnessed many examples of the good in our society: We saw new business ventures develop out of the ashes, and we observed firsthand the generosity and caring of our friends, neighbors, and complete strangers.

During the past year, more than 170 million individuals and millions of businesses received financial relief through three rounds of stimulus payments, Paycheck Protection Program loans, and Employee Retention Credits. The IRS and its employees were instrumental in providing this much-needed relief. I want to recognize and thank the IRS leadership and its employees, and particularly Taxpayer Advocate Service employees, for making sacrifices this past year, helping taxpayers during this difficult time, and staying true to our mission.

### THE BEST OF TIMES

Despite all its challenges, the IRS processed 136 million individual income tax returns and issued 96 million refunds totaling \$270 billion during the 2021 filing season. That matches up closely to the results of the last typical filing season in 2019.<sup>1</sup> In addition to its traditional work, the IRS was entrusted by Congress to issue three rounds of stimulus payments — a total of about 475 million payments worth \$807 billion as of this writing — and to deliver other financial relief programs to mitigate the impact of the pandemic on U.S. families and businesses.<sup>2</sup> The IRS and its employees deserve tremendous credit for what they have accomplished under very difficult circumstances, but there is always room for improvement.

1 See IRS, 2021 Filing Season Statistics (week ending May 21, 2021), <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-21-2021>; IRS, 2019 Filing Season Statistics (week ending Apr. 19, 2019), <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-19-2019> (showing the IRS processed 131 million returns and issued 96 million refunds totaling \$261 billion during the 2019 filing season).

2 The IRS reports it issued 160 million payments worth \$270 billion under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; 147 million payments worth \$142 billion under the COVID-Related Tax Relief Act of 2020; and 169 million payments worth \$395 billion under the American Rescue Plan Act of 2021. See IRS News Release, IR-2021-38, As Required by Law, All First and Second Economic Impact Payments Issued; Eligible People Can Claim Recovery Rebate Credit (Feb. 16, 2021), <https://www.irs.gov/newsroom/as-required-by-law-all-first-and-second-economic-impact-payments-issued-eligible-people-can-claim-recovery-rebate-credit>; IRS News Release, IR-2021-127, More Than 2.3 Million Additional Economic Impact Payments Disbursed Under the American Rescue Plan; Total Payments Top 169 Million (June 9, 2021), <https://www.irs.gov/newsroom/more-than-2-point-3-million-additional-economic-impact-payments-disbursed-under-the-american-rescue-plan-total-payments-top-169-million>.

## THE WORST OF TIMES

The impact of the pandemic on IRS operations — and therefore on taxpayers — has been significant.

### **Historical Highs: The IRS Finished the Filing Season With Over 35 Million Tax Returns Awaiting Manual Reviews**

This year, the IRS is dealing with an unprecedented number of returns requiring manual review, slowing the issuance of refunds. The IRS finished the filing season with a backlog of over 35 million individual and business income tax returns that require manual processing — meaning that employee involvement is generally required before a return can advance to the next stage in the processing pipeline. The backlog includes about 16.8 million paper tax returns waiting to be processed; about 15.8 million returns suspended during processing that require further review; and about 2.7 million amended returns awaiting processing.

Of the 15.8 million returns suspended, approximately 10.3 million were in suspense in the Error Resolution System (ERS) unit as of May 22, 2021. Once the IRS identifies a return as having a potential error, it sends it to ERS, where an employee must manually review it to address the identified error(s). During a typical filing season, ERS can quickly determine if an error was made and move the return through the process, but this filing season was anything but typical, leading to long delays in processing.

In particular, large numbers of returns were sent to ERS where (i) there was a discrepancy between the amount of the Recovery Rebate Credit (RRC) a taxpayer claimed and the amount for which IRS records indicated the taxpayer qualified and (ii) a taxpayer elected to use 2019 earnings (rather than 2020 earnings) for purposes of claiming the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC). In these and other circumstances, employees needed to review the return and either manually release the refund or confirm the error. Reduced staffing combined with the high volume of returns sent to ERS has forced the IRS to “suspend” returns (essentially placing them into a work queue) until ERS is able to work them.

If the IRS does not have math error authority to automatically correct an identified error, it will send the return to its “Processing Rejects” unit. For example, taxpayers may submit returns where a schedule is missing or where the taxpayer has omitted Form 8962, Premium Tax Credit, and Form 1095-A, Health Insurance Marketplace Statement, both of which are necessary to reconcile the Premium Tax Credit with the Advance Premium Tax Credit. As of May 22, 2021, there were approximately 1.4 million returns in the Processing Rejects unit.

The next possible detour for a taxpayer’s return that cannot be processed is the “Unpostables” unit. Unpostable tax returns commonly result from entity problems with the taxpayer’s identification number, name, or both. As of May 22, 2021, there were approximately 2.0 million returns in the Unpostables unit.

Returns flagged as having potentially been filed by an identity thief are referred for manual review to the Taxpayer Protection Program (TPP), requiring taxpayers to authenticate their identities over the phone, online, or by visiting a Taxpayer Assistance Center (TAC) prior to the processing of the return. From January 1, 2021, through May 22, 2021, the IRS selected about 3.7 million returns for TPP review, of which

1.4 million have been verified as non-identity theft, leaving at least 2.1 million suspected identity theft returns in inventory.<sup>3</sup>

These processing backlogs matter greatly because most taxpayers overpay their tax during the year by way of wage withholding or estimated tax payments and are entitled to receive refunds when they file their returns. Moreover, the government uses the tax system to distribute other financial benefits. So far for tax year 2020, in addition to repaying overpayments of tax, the IRS issued about 20 million refunds that included EITC benefits<sup>4</sup> worth up to \$6,660<sup>5</sup> and about 15 million refunds that included ACTC benefits<sup>6</sup> worth up to \$1,400 per qualifying child.<sup>7</sup> This year, over eight million taxpayers also may be eligible to receive RRCs.<sup>8</sup>

## PATIENCE IS A VIRTUE

The IRS's historically high number of returns requiring manual review means that most individual taxpayers in this group and many business taxpayers will not receive timely refunds and will have to wait until the IRS eventually processes their returns. For taxpayers who can afford to wait, the best advice is to be patient and give the IRS time to work through its processing backlog. But particularly for low-income taxpayers and small businesses operating on the margin, refund delays can impose significant financial hardships. Not everyone can afford to be patient.

## Historical Highs and Historical Lows: The IRS Received Over Four Times as Many Telephone Calls as in 2020, Resulting in Historically Poor Service, With Telephone Assistors Answering Only About Seven Percent of Taxpayer Calls

The IRS received more telephone calls during the 2021 filing season than it had ever received in a full fiscal year.<sup>9</sup> During the height of the filing season, the IRS at one point received telephone calls at the rate of about 1,500 per second.<sup>10</sup> Needless to say, IRS employees could not handle this massive volume of calls. The IRS reported a “Level of Service” on its Accounts Management telephone lines of 15 percent, with only seven percent of taxpayer calls reaching a telephone assistor.<sup>11</sup> The most frequently called toll-free number is the “1040” line for individual income tax services. It logged about 85 million calls, and only three percent of calls (*i.e.*, three out of 100) reached a Customer Service Representative (CSR).<sup>12</sup>

3 IRS, TPP Combined Report 3 (May 24, 2021). IRS, IDT and IVO Analysis – Main Performance Report (May 26, 2021, including data as of May 19, 2021). Some additional return selections have not cleared return processing and are therefore not included in the TPP ending inventory.

4 IRS, Compliance Data Warehouse (CDW) Individual Returns Transaction File (IRTF). This includes returns processed through May 27, 2021. These volumes will likely be even higher when the IRS is able to process all tax year 2020 paper returns and work through the returns where processing has been temporarily suspended.

5 See IRC § 32. See also Rev. Proc. 2019-44, 2019-47 I.R.B. 1093.

6 IRS, IRS FY 2019 Data Book, Table 7 (June 2020).

7 See IRC § 24(d)(1). See also Rev. Proc. 2019-44, 2019-47 I.R.B. 1093.

8 See IRC §§ 6428, 6428A. IRS News Release, IR-2021-127, More Than 2.3 Million Additional Economic Impact Payments Disbursed Under the American Rescue Plan; Total Payments Top 169 Million (June 9, 2021), <https://www.irs.gov/newsroom/more-than-2-point-3-million-additional-economic-impact-payments-disbursed-under-the-american-rescue-plan-total-payments-top-169-million>.

9 Until this year, the IRS had received its highest number of telephone calls in FY 2008 when it logged about 166.6 million net attempts. During the 2021 filing season, it recorded 167.4 million net attempts. IRS, Joint Operations Center (JOC) Snapshot Reports, Enterprise Total (comparing FY ending Sept. 30, 2008, with week ending May 22, 2021).

10 *The IRS's Fiscal Year 2022 Budget, Hearing Before the S. Comm. on Finance*, 117th Cong. (June 8, 2021) (statement of Charles P. Rettig, Commissioner of Internal Revenue).

11 IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

12 IRS, JOC Snapshot Reports, Product Line Detail: Individual Income Tax Services (week ending May 22, 2021).

CSRs have experienced a very difficult year, with an unrelenting volume of calls and the inability to provide specific information on stimulus payment delays or pending refunds. These are difficult conversations to have and difficult for taxpayers to experience. In many cases, CSRs cannot determine the status of a taxpayer's return or pending refund and are doing the best they can. Yet from the taxpayer's perspective, the inability of the IRS to answer calls or provide answers causes frustration and undermines a fundamental taxpayer right — namely, the *right to be informed*.<sup>13</sup>

Each year, Congress appropriates a budget and allocates funds for specific tasks. This year, Congress funded the IRS to provide a 60 percent level of service with its CSRs<sup>14</sup> — meaning it was anticipated that in a normal year, pre-pandemic, CSRs would answer six out of every ten calls routed to them. I believe that percentage, even in a good year, is unacceptable. For future budgets, I urge Congress to provide funding to achieve a level of service closer to 100 percent, and I urge the IRS to continue exploring ways to achieve greater efficiencies with its phone service. In my view, phone assistance is not merely an option or a luxury. The ability to talk with an IRS employee by phone to facilitate tax compliance is a fundamental right and a cornerstone of good tax administration.

Whether a taxpayer needs general information or is responding to an audit or collection notice, the IRS's toll-free lines are often the first or second option — as evidenced by the 167 million taxpayer calls during the filing season. When so few callers can get through to a telephone assistor, problems remain unsolved and taxpayer frustration mounts. While intellectually understandable, this filing season's telephone service was well below acceptable levels, and going forward, increased funding is required even for a “normal” filing season, let alone for a pandemic year.

## WITH EXPERIENCE COMES WISDOM

### The IRS Can Apply Lessons Learned From the Past Year to Improve Its Operations in the Future

Over the long run, the lessons learned from the pandemic are valuable in helping to identify or reprioritize needs for improved tax administration and taxpayer service. The pandemic exposed weaknesses and vulnerabilities that must be strengthened; it forced the IRS to experiment with new approaches to old problems; it led to a renewed awareness of the impact of cuts to the IRS's budget over the past decade and the IRS's need for additional funding; and it is causing the IRS and congressional overseers to collaborate on steps to improve the IRS's performance going forward to provide taxpayers with the service they deserve.

The following are recommended proactive steps to improve communication between the IRS and its customers:

- **Prioritize the development of accessible, robust online accounts.** The IRS offers an online account option for individual taxpayers, but its usefulness is limited in two ways. First, most taxpayers who try to establish online accounts fail because they cannot pass the e-authentication requirements.<sup>15</sup> Second,

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<sup>13</sup> See IRC § 7803(a)(3)(A).

<sup>14</sup> IRS, Pub. 5530, Budget in Brief Fiscal Year 2021, at 5 (June 2020), <https://www.irs.gov/pub/irs-prior/p5530--2020.pdf>.

<sup>15</sup> IRS, Office of Privacy, Governmental Liaison and Disclosure response to TAS information request (Oct. 13, 2020) (stating that the authentication rate for IRS online applications requiring the highest level of assurance authentication, including online taxpayer accounts, was 42 percent in FY 2020).

the functionality of the accounts is very limited. It is also imperative that the IRS provide robust online accounts for tax practitioners on behalf of taxpayers. For individuals and businesses that have been banking online for two decades or more, the contrast between their online bank accounts and an online IRS account is stark. While the IRS is taking constructive steps to address the authentication issues, we have urged it to prioritize the development of a broadly functional online account that would enable taxpayers and practitioners to interact with the IRS virtually on most issues, just as customers can do with their financial institutions. Such an account not only would improve service for taxpayers who are comfortable with online communications, but it would free up CSRs to assist taxpayers who need or prefer in-person or telephonic communication.<sup>16</sup>

- **Expand customer callback technology to all IRS toll-free telephone lines.** Many businesses and federal agencies with large telephone call centers offer customers the option of receiving a callback when the wait time to speak with a CSR is long. The IRS offers this option on some of its telephone lines, but the option is not yet offered on most lines, including the high-volume lines. Providing that option would substantially improve telephone service and the customer experience by reducing the time taxpayers spend waiting on hold and serving as a workload management tool for the IRS. When call volumes are low, telephone assistants can answer calls quickly. When call volumes are high, telephone assistants can call back taxpayers in the order in which their calls are received.<sup>17</sup>
- **Reduce barriers to e-filing tax returns.** One of the biggest challenges the IRS has faced over the past year has been processing paper returns. Although more than 90 percent of individual taxpayers now e-file their returns, about ten percent still mail them in on paper. Many of these taxpayers would prefer to file electronically but are prevented from doing so by IRS e-filing limitations. There are three principal limitations: (i) taxpayers sometimes are required to submit statements or other substantiation with their returns, and these attachments generally cannot be e-filed; (ii) some tax forms used by limited numbers of taxpayers are not accepted electronically; and (iii) taxpayers sometimes need to override default entries when preparing their returns with tax software, and some of these overrides render returns ineligible for e-filing. If the IRS addresses these limitations, all taxpayers will have the option of e-filing their returns.<sup>18</sup>
- **Utilize scanning technology for individual income tax returns prepared electronically but submitted on paper.** When taxpayers file returns on paper, IRS employees must manually transcribe the data line-by-line into IRS systems. In FY 2020, the IRS received about 17 million individual income tax returns and millions of business and other tax returns on paper. Manually entering data from so many paper returns is an enormous task, and transcription errors are common, particularly on longer returns. Transcription errors result in more work for the IRS and for taxpayers; namely, notices to taxpayers, taxpayer telephone calls, and taxpayer correspondence that must be reviewed and evaluated. Scanning technology is available that would allow the IRS to machine read paper returns and avoid the need for manual data entry. We understand the IRS is exploring the implementation of scanning technology for paper 2020 tax returns. I encourage the IRS to move quickly, as scanning technology will improve

16 For additional background, see National Taxpayer Advocate 2020 Annual Report to Congress 44-59 (Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*).

17 For additional background, see National Taxpayer 2020 Annual Report to Congress 28-43 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*).

18 For additional background, see National Taxpayer 2020 Annual Report to Congress 75-83 (Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*).



accuracy and reduce costs, it should be relatively easy to implement, and most important, it will provide taxpayers with better service and quicker refunds.<sup>19</sup>

- **Expand digital acceptance and transmission of documents and digital signatures.** The March 2020 closure of IRS offices and mail facilities made it impossible for IRS employees to receive paper documents from taxpayers. As a workaround, the IRS issued temporary guidance that authorizes employees to accept and transmit documents related to the determination or collection of a tax liability by email using an established secured messaging system.<sup>20</sup> Employees are also permitted to accept images of signatures (scanned or photographed) and digital signatures on documents related to the determination or collection of a tax liability. We strongly recommend the IRS make these temporary solutions permanent. In addition, the Taxpayer First Act (TFA) requires the IRS to develop guidance to establish uniform standards and procedures for the acceptance of taxpayers' electronic signatures for powers of attorney (Form 2848) and tax information authorizations (Form 8821).<sup>21</sup> It is my understanding that the first version of this tool is anticipated to go live this summer. The IRS should move forward with additional digital taxpayer services.
- **Offer videoconferencing options to taxpayers.** Videoconference technology allows taxpayers and their authorized representatives to be both seen and heard and to share documents without being physically present. The IRS Independent Office of Appeals offers WebEx technology for virtual face-to-face conferences among taxpayers, representatives, and Appeals Officers. The IRS Office of Chief Counsel and the U.S. Tax Court are also conducting video communications and virtual trials using ZoomGov.com. Although videoconferencing should not replace in-person or telephone conference options, it adds a vital human interaction option to enable communication with taxpayers when appropriate, and it may provide options for taxpayers with difficulty traveling or the inability to take extended time off from work.

My office has recommended the IRS evaluate the feasibility of expanding the use of these technologies to as many taxpayer-facing functions as possible without removing the in-person options for taxpayers. Videoconferencing should continue to be expanded and offered as an option to taxpayers because it can help fill current or future voids in face-to-face service at TACs and in dealing with revenue agents or revenue officers. It can also be an extremely useful tool to supplement correspondence audits, where conversing face-to-face may facilitate a better understanding of the taxpayer's return. In addition, taxpayers who are geographically remote from a TAC and taxpayers with mobility or transportation challenges may find videoconferencing technology more helpful and economical than traveling for an in-person conference.

19 For additional background, see National Taxpayer Advocate 2021 Purple Book 14 (Legislative Recommendation: *Require the IRS to Work with Tax Software Companies to Incorporate Scanning Technology for Individual Income Tax Returns Prepared Electronically But Filed on Paper*).

20 See Memorandum from Sunita B. Lough, Deputy Commissioner, Services and Enforcement, for All Services and Enforcement Employees, Control No. NHQ-01-1120-0004, (1) Approval to Accept Images of Signatures and Digital Signatures [and] (2) Approval to Receive Documents and Transmit Encrypted Documents by Email (Dec. 1, 2020), <https://www.irs.gov/pub/irs-utl/approval-to-accept-images-of-signatures-and-digital-signatures.pdf>; Memorandum from Sunita B. Lough, Deputy Commissioner, Services and Enforcement, for All Services and Enforcement Employees, Control No. NHQ-01-0620-0002, (1) Approval to Accept Images of Signatures and Digital Signatures [and] (2) Approval to Receive Documents and Transmit Encrypted Documents by Email (June 12, 2020), <https://www.irs.gov/pub/foia/ig/spder/nhq-01-0620-0002.pdf>.

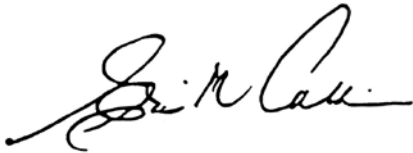
21 Pub. L. No. 116-25, § 2302, 133 Stat. 981, 1013 (2019). For additional background, see National Taxpayer 2020 Annual Report to Congress 75-83 (Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*).

## CONCLUSION

I am by nature an optimist, and I believe brighter days in tax administration lie ahead for several reasons. First, as a result of widespread vaccinations, the impact of the COVID-19 pandemic is abating in this country, which will have a positive impact on IRS operations. Second, in responding to directives contained in the TFA, the IRS has developed ambitious plans to improve the taxpayer experience. Third, and critically important, Congress has appropriated additional funding for IRS operations, which will enable the IRS to hire more CSRs and modernize its information technology systems to deliver on its TFA plans to improve taxpayer service.

In the coming months, the IRS must work through its backlog of tax returns and be current in processing its correspondence while focusing on rebuilding itself to become a more efficient and taxpayer-centric organization. In the coming years, the IRS must modernize its operations to better meet taxpayer needs, reduce administrative burdens, and improve the delivery of services. I look forward to working with the IRS leadership and Congress to help ensure that taxpayer rights are protected, taxpayer needs are better met, and taxpayer rights and services are always first and foremost in the mind of our employees as we move forward.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Erin M. Collins". The signature is fluid and cursive, with the first name "Erin" being more prominent.

Erin M. Collins  
National Taxpayer Advocate  
June 30, 2021

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## Review of the 2021 Filing Season

### INTRODUCTION

The 2021 filing season<sup>1</sup> was the quintessential definition of a perfect storm. No one could have predicted a global pandemic or the lasting and lingering impact to taxpayers, IRS employees, and tax administration during the last 15 months. To state the obvious, this filing season has been challenging for tens of millions of taxpayers and anything but normal for the IRS and its employees. The IRS endured challenges associated with the COVID-19 pandemic — its employees endured personal and professional challenges, which resulted in a historically high volume of unanswered telephone calls to its phone assistants and a historically low level of service. Millions of 2019 and 2020 paper returns were delayed and awaited processing, and tens of millions of returns awaited the atypical necessity of manual reviews — most still waiting for processing. Tax legislation was enacted at the beginning of and in the midst of filing season; a third round of stimulus payments was enacted and paid starting in mid-March; and changes were necessary to the IRS's programming and systems to recalculate unemployment insurance benefits and Advance Premium Tax Credit benefits because of the March legislation. All this occurred while the IRS's workforce was working remotely or within the constraints of its safety procedures and protocols put in place to protect employees, their families, and our local communities.

In March 2020, December 2020, and March 2021, Congress directed and entrusted the IRS with the responsibility to administer critical programs designed to provide financial relief to struggling families and individuals and to boost the U.S. economy generally.<sup>2</sup> Two of the rounds of economic impact payments (EIPs) were issued in the midst of an annual filing season. The COVID-19 pandemic has strained the IRS's customer service performance, and its ability to adequately assist taxpayers continues to be negatively affected. The combination of pandemic-induced shutdowns, three rounds of EIPs, challenges with paper return filings, a backlog of over 35 million suspended 2020 returns, and the responsibilities of implementing new legislation resulted in a challenging 2021 filing season for the IRS and tens of millions of taxpayers — one that will continue to be analyzed for lessons learned for future filing seasons.

### FEBRUARY 12, 2021 – OPENING OF THE FILING SEASON

The IRS began accepting tax year 2020 returns for processing on February 12, 2021, about two weeks later than a typical filing season.<sup>3</sup> The delayed start provided the IRS additional time to program and test its systems following the late tax law changes that provided an additional round of EIPs and other tax benefits.<sup>4</sup> Recognizing the need to provide taxpayers additional time to gather documents and prepare returns, the Treasury Department postponed the deadline by a month, from April 15 to May 17, for individuals to file Forms 1040, contribute to their Individual Retirement Accounts, and pay any remaining 2020 federal income

1 The 2021 filing season is with respect to the processing of individual tax returns for tax year 2020.

2 See Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); American Rescue Plan Act (ARPA) of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).

3 IRS, IR-2021-16, 2021 Tax Filing Season Begins Feb. 12; IRS Outlines Steps to Speed Refunds During Pandemic (Jan. 15, 2021), <https://www.irs.gov/newsroom/2021-tax-filing-season-begins-feb-12-irs-outlines-steps-to-speed-refunds-during-pandemic>.

4 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).

tax.<sup>5</sup> The IRS had postponed the 2020 filing due date to July 15, so the last time it observed the traditional mid-April filing season end date was in the 2019 filing season.

As the IRS entered the 2021 filing season, it faced significant challenges, including:

- Agency operations remained at a reduced capacity due to social distancing measures taken to protect the health and safety of both taxpayers, employees, and their families due to the COVID-19 national emergency.
- The IRS still had not processed all paper returns and correspondence received in the 2020 filing season. On December 25, 2020, the IRS estimated that it had more than 11.7 million paper-filed individual and business returns that it still needed to manually process.<sup>6</sup>
- After the passage of late-year legislation, the IRS was tasked with quickly implementing programming changes to comply with these tax law changes.<sup>7</sup>

**FIGURE 1<sup>8</sup>**

### Important Dates Impacting the 2021 Filing Season

<b>December 27, 2020</b>	Enactment of Consolidated Appropriations Act, 2021 (including the COVID-Related Tax Relief Act of 2020 and the Coronavirus Response and Relief Supplemental Appropriations Act of 2021).
<b>December 29, 2020</b>	The IRS begins distributing second round of Economic Impact Payments.
<b>February 12, 2021</b>	The 2021 filing season begins.
<b>March 11, 2021</b>	Enactment of the American Rescue Plan Act of 2021.
<b>March 12, 2021</b>	The IRS begins distributing third round of Economic Impact Payments.
<b>March 17, 2021</b>	Treasury and the IRS announce the postponement of the deadline for individual taxpayers to file Form 1040 and pay their federal income tax from April 15, 2021, to May 17, 2021.
<b>May 17, 2021</b>	Postponed tax filing and payment deadline for individuals.

5 IRS, IR-2021-59, Tax Day for Individuals Extended to May 17: Treasury, IRS Extend Filing and Payment Deadline (Mar. 17, 2021), <https://www.irs.gov/newsroom/tax-day-for-individuals-extended-to-may-17-treasury-irs-extend-filing-and-payment-deadline>.

6 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2021-46-023, *Results of the 2020 Filing Season and Effects of COVID-19 on Tax Processing Operations* 5 (Mar. 22, 2021).

7 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).

8 *Id.*; IRS, IR-2020-280, Treasury and IRS Begin Delivering Second Round of Economic Impact Payments to Millions of Americans (Dec. 29, 2020), <https://www.irs.gov/newsroom/treasury-and-irs-begin-delivering-second-round-of-economic-impact-payments-to-millions-of-americans>; IRS, IR-2021-16, 2021 Tax Filing Season Begins Feb. 12; IRS Outlines Steps to Speed Refunds During Pandemic (Jan. 15, 2021), <https://www.irs.gov/newsroom/2021-tax-filing-season-begins-feb-12-irs-outlines-steps-to-speed-refunds-during-pandemic>; ARPA, Pub. L. No. 117-2, 135 Stat. 4 (2021); IRS, IR-2021-54, IRS Begins Delivering Third Round of Economic Impact Payments to Americans (Mar. 12, 2021), <https://www.irs.gov/newsroom/irs-begins-delivering-third-round-of-economic-impact-payments-to-americans>; IRS, IR-2021-59, Tax Day for Individuals Extended to May 17: Treasury, IRS Extend Filing and Payment Deadline (Mar. 17, 2021), <https://www.irs.gov/newsroom/tax-day-for-individuals-extended-to-may-17-treasury-irs-extend-filing-and-payment-deadline>.

## FILING SEASON PERFORMANCE<sup>9</sup>

Of the about 148 million individual returns that the IRS received in the 2021 filing season, 94 percent were filed electronically.<sup>10</sup> Figure 2 presents an overview of returns processed and refunds issued during the past four filing seasons. Because the 2020 filing season was such an aberration due to the impact of the pandemic and the IRS's postponement of the due date for individual tax returns to July 15, 2020, we will compare 2021 filing season data to 2018 and 2019 filing season data, where available.

**FIGURE 2, Filing Season Statistics Comparing Weeks Ending April 20, 2018; April 19, 2019; July 15, 2020; May 21, 2021<sup>11</sup>**

		2018	2019	2020	2021	% Change 2018-2021
<b>Individual Income Tax Returns</b>	Total Receipts	136,919,000	137,233,000	151,782,000	148,012,000	8%
	Total Processed	130,477,000	130,775,000	145,464,000	135,773,000	4%
<b>e-Filing Receipts</b>	Total e-Filing	124,515,000	126,264,000	143,379,000	138,563,000	11%
	Tax Professionals	70,983,000	70,476,000	73,806,000	74,195,000	5%
	Self-Prepared	53,532,000	55,788,000	69,573,000	64,368,000	20%
<b>Total Refunds</b>	Number	95,434,000	95,737,000	100,483,000	95,632,000	0%
	Amount	\$265.3 bil	\$260.9 bil	\$276.1 bil	\$270.3 bil	2%
	Average Refund	\$2,780	\$2,725	\$2,748	\$2,827	2%
<b>Direct Deposit Refunds</b>	Number	80,491,000	83,249,900	83,384,000	87,045,000	8%
	Amount	\$236.9 bil	\$238.4 bil	\$240.5 bil	\$252.4 bil	7%
	Average Refund	\$2,943	\$2,863	\$2,884	\$2,899	-2%
<b>Web Usage</b>	Visits to IRS.gov	386.9 mil	421.5 mil	1,380.7 mil	1,372.7 mil	255%

9 The IRS postponed the filing season due date to June 15, 2021, for taxpayers in certain states (Louisiana, Oklahoma, and Texas) that have been impacted by severe winter storms, following recent disaster declarations issued by the Federal Emergency Management Agency. See IRS, LA-2021-02, IRS Announces Tax Relief for Louisiana Severe Winter Storm Victims (Mar. 10, 2021), <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-louisiana-severe-winter-storm-victims>; IRS, OK-2021-01, IRS Announces Tax Relief for Oklahoma Severe Winter Storm Victims (Feb. 25, 2021), <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-oklahoma-severe-winter-storm-victims>; IRS, TX-2021-02, IRS Announces Tax Relief for Texas Severe Winter Storm Victims (Feb. 22, 2021), <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-texas-severe-winter-storm-victims>. The data for this filing season review does not include timely-filed tax returns from taxpayers in these states that were filed after May 17, 2021.

10 IRS, Filing Season Statistics for Week Ending May 21, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-21-2021> (last visited May 28, 2021).

11 *Id.*; IRS, Filing Season Statistics for Week Ending July 17, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-july-17-2020> (last visited May 28, 2021); Filing Season Statistics for Week Ending April 19, 2019, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-19-2019> (last visited May 28, 2021). Percent Change column computed based on actual numbers and not rounded numbers.

As Figure 2 shows, there was an increase of eight percent in the volume of individual income tax returns received this filing season, when compared to the 2018 filing season. We attribute this spike in receipts in part to tax returns filed by taxpayers who typically have no filing requirement but who filed tax returns this filing season so they could receive their EIPs.

In contrast, the volume of individual income tax returns *processed* this filing season increased just four percent, about half of the increase in returns received.<sup>12</sup> This disconnect between returns filed and returns processed may be attributable to the significant delays in returns requiring manual processing.

The data shows a substantial increase in visits to IRS.gov since 2018. We speculate this is partly attributable to the many questions taxpayers had about COVID-19 relief legislation and the IRS's attempt to answer these questions by posting hundreds of FAQs, as well as the tens of millions of returns requiring manual processing delaying millions of refunds beyond the normal processing time.

This filing season, three of the most significant challenges have been long delays resulting from manual processing of over 35 million tax returns, an inability to keep up with the unprecedented volume of taxpayer telephone calls to the IRS's toll-free lines, and the timing of tax legislation providing much-needed taxpayer relief just before and in the middle of this filing season.

### Over 35 Million Tax Returns Required Manual Processing

Despite the majority of eligible taxpayers receiving their EIPs quickly and seamlessly, about eight million potentially eligible taxpayers had not received their first EIP as of January 2021.<sup>13</sup> Taxpayers who did not receive the first or second rounds of EIP, or who received only a portion of the amount to which they were entitled, claimed the missing funds as a recovery rebate credit (RRC) on their 2020 return.<sup>14</sup> If the amount claimed as the RRC contradicted IRS records, the return was directed to its Submission Processing Division for manual verification to ensure the amounts claimed were correct or determine if the RRC needed to be adjusted. As of May 21, 2021, more than five million returns were identified with inconsistent amounts claimed versus IRS records.<sup>15</sup> These errors or inconsistencies included dependents listed on multiple returns, missing or invalid Social Security numbers or Individual Taxpayer Identification Numbers without a military indicator, individuals who were deceased before the tax period, dependents who exceeded the age limitation, and RRC amounts computed incorrectly.

With the December 27, 2020, legislation, the IRS did not have time to adjust its systems for the 2021 filing season allowing the 2019 earnings to be systemically verified. Although these legislative changes provided much-needed relief for millions of taxpayers, the IRS had to manually verify those returns where the taxpayer elected to use 2019 earned income to claim the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC). Unlike prior years, the IRS had to deal with a large volume of returns requiring manual

<sup>12</sup> IRS Submission Processing counts a return as "processed" when it has taken all the steps necessary to post the return to the account.

<sup>13</sup> Department of Treasury, *FACT SHEET: Treasury to Work to Ensure Families Get Access to Economic Impact Payments* (Jan. 22, 2021), <https://home.treasury.gov/news/featured-stories/fact-sheet-treasury-to-work-to-ensure-families-get-access-to-economic-impact-payments>.

<sup>14</sup> CARES Act Division B, Title I, § 2101(g)(3). The IRS was prohibited under the law from issuing the first round of EIPs beyond December 31, 2020. IRC § 6428(f)(3)(A). The IRS was prohibited under the law from issuing the second round of EIPs after January 15, 2021. IRC § 6428A(f)(3)(A)(ii)(I).

<sup>15</sup> IRS, Math Error Report Cycle 20 (ending May 21, 2021) (considering Taxpayer Notice Codes 681, 682, and 683).

reviews. These returns were transferred to the IRS's Error Resolution System (ERS). ERS held these returns in suspense until an employee could manually review the return and verify the RRC claimed on the return or the 2019 earnings for EITC lookback claims, causing unusually long delays for taxpayer's refunds. Last filing season, it was the paper-filed tax returns and backlog of correspondence that created havoc for taxpayers. This filing season, in addition to paper-filed returns, it was the required manual reviews slowing down the issuance of refunds.

At the end the 2021 filing season, the IRS still had over 35 million individual and business tax returns requiring manual processing, meaning employee involvement is generally required before a return can advance to the next stage in the processing pipeline.<sup>16</sup> Unprocessed paper tax returns account for almost half the manual processing. Amended returns and returns suspended during processing — returns set aside because of issues that require additional review — account for the other half. Figure 3 shows the significant increase in the processing backlog from the 2019 and 2020 filing seasons.

**FIGURE 3, Status of Inventory Requiring Manual Processing (2019 to 2021)<sup>17</sup>**

Year	Description	Individual	Business	Not Specified	Total	Comparison of Total Volumes to Prior Year
2019	<b>Paper Returns Awaiting Processing</b>					
	Calendar Year 2019	1,600,000	1,500,000	-	3,200,000	
	<b>Total Paper Returns Awaiting Processing</b>	<b>1,600,000</b>	<b>1,500,000</b>	<b>-</b>	<b>3,200,000</b>	
	<b>Paper and Electronic Returns – Processing Suspended</b>					
	Error Resolution Cases	1,000,000	-	-	1,000,000	
	Processing Rejects	1,000,000	100,000	-	1,100,000	
	Unpostable Returns	200,000	300,000	-	500,000	
	ID Theft Cases	800,000	-	-	800,000	
	<b>Total Processing Suspended Returns</b>	<b>3,000,000</b>	<b>500,000</b>	<b>-</b>	<b>3,500,000</b>	
	<b>Unprocessed Amended Returns (Form 1040X)</b>	<b>700,000</b>			<b>700,000</b>	
	<b>Grand Total Unprocessed Returns - 2019 Filing Season</b>	<b>5,300,000</b>	<b>2,000,000</b>	<b>-</b>	<b>7,400,000</b>	

<sup>16</sup> Data provided by W&I on June 23, 2021. (On file with TAS.)

<sup>17</sup> *Id.* Each cell value in Figure 3 was rounded to the nearest hundred thousand. Therefore, the totals may not equal the sum of the totaled cells. For calendar year 2020, there were an additional eight million pieces of unopened correspondence, which includes an undetermined number of unprocessed paper returns. As indicated in Figure 3, the IRS will have some volume of unprocessed returns at the end of each filing season.



Year	Description	Individual	Business	Not Specified	Total	Comparison of Total Volumes to Prior Year
2020	<b>Paper Returns Awaiting Processing</b>					
	Calendar Year 2020	3,400,000	1,000,000	-	4,300,000	
	<b>Total Paper Returns Awaiting Processing</b>	<b>3,400,000</b>	<b>1,000,000</b>	<b>-</b>	<b>4,300,000</b>	<b>34%</b>
	<b>Paper and Electronic Returns – Processing Suspended</b>					
	Error Resolution Cases	1,400,000	200,000	-	1,600,000	60%
	Processing Rejects	1,600,000	200,000	-	1,800,000	64%
	Unpostable Returns	800,000	500,000	-	1,300,000	160%
	ID Theft Cases	1,100,000	-	-	1,100,000	38%
	<b>Total Processing Suspended Returns</b>	<b>4,900,000</b>	<b>900,000</b>	<b>-</b>	<b>5,800,000</b>	<b>66%</b>
	<b>Unprocessed Amended Returns (Form 1040X)</b>	<b>600,000</b>			<b>600,000</b>	<b>-14%</b>
	<b>Grand Total Unprocessed Returns - 2020 Filing Season</b>	<b>8,900,000</b>	<b>1,900,000</b>	<b>-</b>	<b>10,700,000</b>	<b>45%</b>
2021	<b>Paper Returns Awaiting Processing</b>					
	Calendar Year 2020	100,000	1,000,000	-	1,100,000	
	Calendar Year 2021	6,000,000	4,600,000	5,100,000	15,700,000	
	<b>Total Paper Returns Awaiting Processing</b>	<b>6,100,000</b>	<b>5,600,000</b>	<b>5,100,000</b>	<b>16,800,000</b>	<b>291%</b>
	<b>Paper and Electronic Returns – Processing Suspended</b>					
	Error Resolution Cases	9,800,000	500,000	-	10,300,000	544%
	Processing Rejects	1,200,000	200,000	-	1,400,000	-22%
	Unpostable Returns	1,100,000	900,000	-	2,000,000	54%
	ID Theft Cases	2,100,000	-	-	2,100,000	91%
	<b>Total Processing Suspended Returns</b>	<b>14,200,000</b>	<b>1,600,000</b>	<b>-</b>	<b>15,800,000</b>	<b>172%</b>
	<b>Unprocessed Amended Returns (Form 1040X)</b>	<b>2,700,000</b>			<b>2,700,000</b>	<b>350%</b>
	<b>Grand Total Unprocessed Returns - 2021 Filing Season</b>	<b>23,000,000</b>	<b>7,200,000</b>	<b>5,100,000</b>	<b>35,300,000</b>	<b>230%</b>

As Figure 3 shows, the 35.3 million unprocessed returns at the end of the 2021 filing season represented a four-fold increase from the 7.4 million unprocessed returns at the end of the 2019 filing season. Processing delays matter greatly because most taxpayers overpay their tax during the year via wage withholding or quarterly payments and are entitled to receive refunds (this filing season, 70 percent of individual income tax returns had associated refunds, with an average refund of \$2,827). Besides returning overpayments of

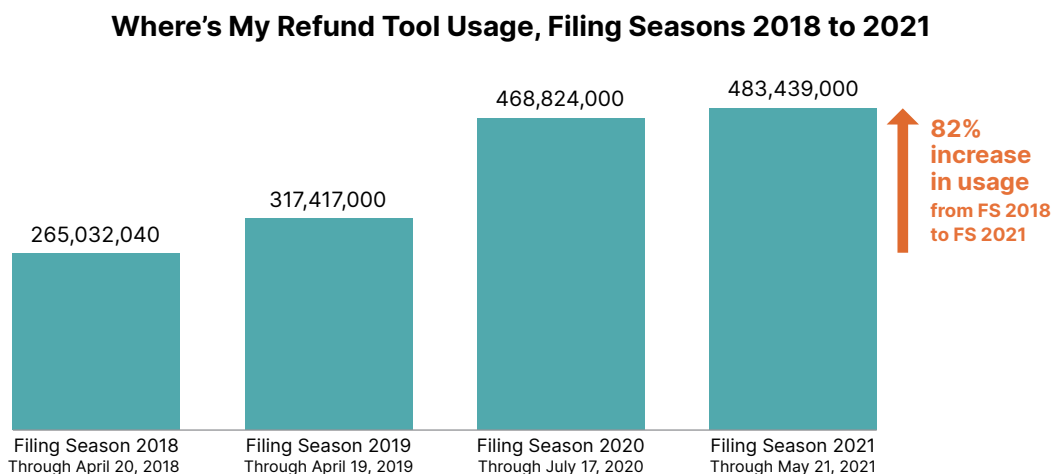
tax, refunds may include refundable credits such as RRCs, EITC benefits worth up to \$6,660,<sup>18</sup> and ACTC benefits worth up to \$1,400 per qualifying child.<sup>19</sup> Until the IRS can manually work through the over 35 million unprocessed tax returns, it will not be able to issue refunds to impacted taxpayers.

Now that the filing season has closed, the good news is that the stream of new returns entering the processing pipeline will slow dramatically, at least until we approach the extended filing deadline of October 15. Commissioner Rettig testified in May 2021 that the IRS anticipates completing the processing of the 2019 Form 1040 paper returns sometime this summer,<sup>20</sup> when it will face manually processing 2019 paper business returns followed by the nearly 16 million individual, business, and miscellaneous 2020 paper returns.<sup>21</sup> It is a positive step that the IRS has finally processed the 2019 individual paper returns, but many taxpayers experienced financial hardships during this unusually extended period of time to manually process the 2019 paper returns. We can understand and articulate the challenges the IRS faced over the past year, but for individuals and businesses that waited nine months, 12 months, or longer to receive their refunds, the reality of the long delays was incomprehensible and in many cases, financially distressing. Taxpayers cannot experience similar challenges in future filing seasons. We cannot allow the agency to face the staffing and technology limitations it has experienced this past year. Americans deserve better.

## WHERE'S MY REFUND TOOL

With the delays, millions of taxpayers turned to the IRS's Where's My Refund tool or IRS2Go (the official app of the IRS) to check the status of their refunds using the most up-to-date information available to the IRS.

**FIGURE 4<sup>22</sup>**



<sup>18</sup> See IRC § 32.

<sup>19</sup> See IRC § 24(h)(5)(A).

<sup>20</sup> *Internal Revenue Service: Narrowing the Tax Gap and Improving Taxpayer Services*, Hearing Before the S. Comm. on Approp., 117th Cong. 10 (May 19, 2021) (written statement of Charles P. Rettig, Commissioner of Internal Revenue).

<sup>21</sup> As of June 11, 2021, all 2019 Forms 1040 have been processed, leaving 800,000 2019 business returns to be manually processed. Data provided to TAS from W&I.

<sup>22</sup> IRS, 2019 Weekly Individual Filing Season Report, Cumulative Statistics Comparing Apr. 20, 2018 and Apr. 19, 2019 for 2018 and 2019 filing seasons; IRS, 2020 Weekly Individual Filing Season Report, Cumulative Statistics Comparing July 19, 2019 and July 17, 2020 for 2020 filing season; IRS, 2021 Weekly Individual Filing Season Report, Cumulative Statistics Comparing May 22, 2020 (Day 117 of 2020 Filing Season) and May 21, 2021 (Day 99 of 2021 Filing Season) for 2021 filing season.

Unfortunately, many taxpayers checking the tool could not secure specific information as to when they would receive their refund and just as importantly, what is causing the delay. The Where's My Refund tool informs taxpayers of three things: 1) the return has been "received" (the IRS is working to process the return), 2) the refund is "approved" (the return has been processed and the refund was confirmed), or 3) the refund was "sent" (the refund has been issued as a direct deposit, paper check, or debit card, or the refund was offset and applied to delinquent taxes or federal obligations). TAS has recommended that the IRS should strive to improve its Where's My Refund tool by providing taxpayers with specific information about the cause of the refund delay, what information the taxpayer needs to provide, and an estimate when the IRS might issue the refund.<sup>23</sup> Providing taxpayers with more information regarding the status of refunds or potential delays will better protect their *right to be informed* and may have the downstream consequence of reducing taxpayers' need to call the IRS for additional information.

## HISTORICALLY LOW LEVEL OF IRS TELEPHONE SERVICE

As taxpayers could not obtain information through an online account and with mail processing significantly delayed, the IRS toll-free telephone lines remained the best option for most taxpayers who needed to communicate with the IRS. Taxpayers whose returns are caught in backlogs or submission processing delays called the IRS seeking information — such as the reason for the delays and what, if anything, they needed to do. Taxpayers who did not receive their EIPs when they expected also called, and most likely called often, and many did not receive fruitful information or satisfying results.

The IRS received more telephone calls this filing season than in any previous filing season, and at one point in the height of filing season, the IRS received over 1,500 calls per second.<sup>24</sup> Because the IRS toll-free telephone lines were initially shut down at the inception of the pandemic and then slowly reopened during 2020, a comparison of the 2021 filing season with the 2018 or 2019 filing season provides better context to understand the gravity of the situation taxpayers faced this season. Figure 5 shows the large surge of calls the IRS has received and the related challenges taxpayers experienced while navigating this difficult filing season.

23 See, e.g., Erin M. Collins, Lifecycle of a Tax Return, NATIONAL TAXPAYER ADVOCATE BLOG (May 18, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-lifecycle-of-a-tax-return/>.

24 Internal Revenue Service: IRS's Fiscal Year 2022 Budget, Hearing Before the S. Comm. on Finance, 117th Cong. (June 8, 2021) (written statement of Charles P. Rettig, Commissioner of Internal Revenue), <https://www.irs.gov/newsroom/written-testimony-of-charles-p-rettig-commissioner-internal-revenue-service-before-the-senate-finance-committee-on-the-irs-budget>.

**FIGURE 5, IRS Telephone Results, 2018 Through 2021 Filing Seasons Comparing Weeks Ending April 20, 2018; April 19, 2019; July 15, 2020; May 21, 2021<sup>25</sup>**

	2018	2019	2020	2021	% Change Between 2018 and 2021
<b>Enterprise Lines</b>					
Calls Received	42,512,830	40,796,555	55,267,317	167,396,426	294%
Calls Answered by Customer Service Representatives (CSRs)	13,521,301	10,082,963	11,605,369	15,667,499	16%
% of Calls Answered by CSRs	32%	25%	21%	9%	-71%
"CSR Level of Service"	73%	59%	52%	19%	-75%
Time on Hold (in minutes)	9	13	17	20	127%
<b>Accounts Management Lines</b>					
Calls Received	35,668,223	34,382,805	46,538,775	150,183,477	321%
Calls Answered by CSRs	10,422,742	8,059,818	8,716,057	10,962,520	5%
% of Calls Answered by CSRs	29%	23%	19%	7%	-75%
"CSR Level of Service"	80%	67%	56%	15%	-81%
Time on Hold (in minutes)	5	9	15	19	269%
<b>Form 1040 Line</b>					
Calls Received	7,894,684	7,316,757	12,089,419	85,121,466	978%
Calls Answered by CSRs	2,434,719	1,903,012	2,246,263	2,527,682	4%
% of Calls Answered by CSRs	31%	26%	19%	3%	-90%
"CSR Level of Service"	79%	67%	54%	6%	-92%
Time on Hold (in minutes)	4	9	14	20	469%
<b>Consolidated Automated Collection System Lines</b>					
Calls Received	3,316,961	3,741,588	5,594,176	6,252,494	89%
Calls Answered by CSRs	1,673,272	1,098,111	1,688,704	2,369,001	42%
% of Calls Answered by CSRs	50%	29%	30%	38%	-25%
"CSR Level of Service"	54%	33%	35%	41%	-24%
Time on Hold (in minutes)	24	41	26	23	-4%

25 IRS, JOC, Snapshot Reports: Enterprise Snapshot for Enterprise Total, Accounts Management, and Consolidated Automated Collection Service data (weeks ending Apr. 20, 2019, June 30, 2020, and May 22, 2021); IRS, JOC, Snapshot Reports: Product Line Detail for the Form 1040 data (weeks ending Apr. 20, 2019, June 30, 2020, and May 22, 2021). For 2020, the last day of the JOC planning period including the filing season is June 30, although the 2020 the filing season was postponed to July 15. "Percentage of Calls Answered by CSRs" reflects the number of calls answered by CSRs divided by the number of calls received. "CSR Level of Service" is an IRS performance measure that reflects the number of calls answered by CSRs divided by the number of calls directed to CSRs (*i.e.*, it excludes primary abandons, taxpayers who encounter busy signals or are disconnected, and calls routed for automated responses). "Average speed of answer" is a measure of the average number of seconds customers waited in queue before receiving service. Percent Change column computed based on actual numbers and not rounded numbers.

During the 2021 filing season through May 22, 2021, the IRS had received about 167 million calls on its enterprise-wide toll-free telephone lines, nearly four times the number of calls it received during the 2018 filing season (about 43 million net call attempts through April 20, 2018). Customer Service Representative (CSR) level of service (LOS) dipped sharply from 73 percent in 2018 to 19 percent in 2021, and only nine percent of callers reached a live assistor in 2021.<sup>26</sup> The low CSR LOS resulted from a confluence of events including the low level of annual appropriated funding of CSRs; EIPs and other relief provided as result of tax law changes; and the unexpected and atypical filing season challenges resulting from the effects of the pandemic. This filing season was the quintessential definition of a perfect storm — a particularly bad or critical state of affairs, arising from several negative and unpredictable factors — resulting in tens of millions of taxpayers experiencing hardship and uncertainty in trying to reach a live assistor.

Each year, Congress appropriates a budget and allocates funds for specific tasks. For fiscal years (FYs) 2020 and 2021, Congress funded the IRS to provide a 60 percent level of service with its CSRs — meaning it anticipated in normal, pre-pandemic years that CSRs were expected to answer only six out of every ten incoming calls to the IRS toll-free telephone lines.<sup>27</sup> That percentage even in a normal year is unacceptable. For future budgets, the National Taxpayer Advocate urges Congress to provide additional funds as the phone service is an essential service that taxpayers require and urges the IRS to continue to explore efficiencies with its phone service. There are many services the IRS provides throughout the year to taxpayers — phone assistance is one of the most essential. Phone assistance is not an option or a luxury; it is a fundamental service and the cornerstone of proper tax administration.

This filing season was anything but normal as evidenced by the historically high volume of calls. The vast majority of the calls to the IRS toll-free telephone lines (about 150 million) were directed to its Accounts Management telephone lines.<sup>28</sup> The IRS reported a 15 percent LOS on its Accounts Management lines, with only seven percent of taxpayer calls reaching a telephone assistor.<sup>29</sup> Among taxpayers who got through to Accounts Management telephone assistants, hold times averaged 19 minutes in the 2021 filing season.<sup>30</sup> This represents a significant decline from the 2018 filing season, when the IRS reported an 80 percent LOS (with 29 percent of taxpayer calls reaching an Accounts Management CSR and an average hold time of five minutes).<sup>31</sup>

The most frequently called Accounts Management toll-free number is the “1040” line for individual income tax services.<sup>32</sup> This filing season, about 85 million calls were directed to this 1040 line, compared to just eight million calls in the 2018 filing season — over ten times the call volume. Only three percent of callers to this phone line reached a CSR (one out of 33 callers), and those who did waited on hold an average of 20 minutes in 2021.<sup>33</sup>

The IRS did a better job answering calls from taxpayers to whom it had sent Collection notices. For example, about six million taxpayers called the Automated Collection System toll-free lines, with a 41 percent LOS (38

26 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Apr. 19, 2019 and May 22, 2021).

27 Department of Treasury, *Budget in Brief* 7-8 (Fiscal Year 2021).

28 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (AM) (week ending May 22, 2021).

29 IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

30 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending May 22, 2021).

31 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending May 22, 2021); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Apr. 20, 2019).

32 The number to this toll-free line is 800-829-1040.

33 IRS, JOC Snapshot Reports, Product Line Detail: Individual Income Tax Services (week ending May 22, 2021).

percent answered by a live assistant). However, callers who managed to get through on those lines waited on hold for an average of 23 minutes.<sup>34</sup>

## IMPACT OF THE COVID-19 PANDEMIC

### The IRS Implemented Legislation While Also Planning for and Administering the 2021 Filing Season

#### The IRS Distributed Three Rounds of Economic Impact Payments

Congress passed four sets of legislation over the last 16 months to assist taxpayers in managing the economic challenges presented by COVID-19. This relief included three rounds of EIPs. About six weeks before the start of the 2021 filing season, the IRS began delivering the second round of EIPs in the Consolidated Appropriations Act, 2021, enacted on December 27, 2020.<sup>35</sup> The IRS disbursed approximately 147 million payments in the second round, totaling about \$142 billion.<sup>36</sup> Then, about a month into the 2021 filing season, the American Rescue Plan Act (ARPA) of 2021 tasked the IRS with delivering the third round of EIPs. Through June 4, the IRS had disbursed about 169 million payments in the third round, totaling approximately \$395 billion.<sup>37</sup> Taken together, the IRS has issued over 475 million payments totaling about \$807 billion during the three rounds of EIP.<sup>38</sup>

#### The IRS Exercised Its Discretion to Bypass Offsets of the Recovery Rebate Credit Against Outstanding Federal Tax Liabilities

In certain circumstances, a taxpayer's federal tax refund can be offset against outstanding tax or non-tax liabilities.<sup>39</sup> The offset rules were applied differently for the different rounds of EIPs and the RRC. The first EIP was offset only against back-due child support, while later rounds of EIPs were not reduced at all by either federal tax or non-tax debts.<sup>40</sup> Conversely, the RRC is subject to regular offset rules for unpaid federal taxes and certain other debts.<sup>41</sup> Fortunately, in mid-March the IRS agreed to use its discretion under IRC § 6402 to bypass offsets for federal tax debts for taxpayers filing 2020 returns that claim the RRC. This was good news for many taxpayers that needed access to cash funds. Unfortunately, taxpayers whose RRC was offset at

34 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending May 22, 2021).

35 Pub. L. No. 116-260, 134 Stat. 1182 (2020).

36 *Internal Revenue Service: Narrowing the Tax Gap and Improving Taxpayer Services, Hearing Before the S. Comm. on Approp.*, 117th Cong. 10 (May 19, 2021) (written statement of Charles P. Rettig, Commissioner of Internal Revenue).

37 *Internal Revenue Service: IRS's Fiscal Year 2022 Budget, Hearing Before the S. Comm. on Finance*, 117th Cong. (June 8, 2021) (written statement of Charles P. Rettig, Commissioner of Internal Revenue), <https://www.irs.gov/newsroom/written-testimony-of-charles-p-rettig-commissioner-internal-revenue-service-before-the-senate-finance-committee-on-the-irs-budget>.

38 The IRS reports it issued more than 160 million payments worth over \$270 billion under the CARES Act; more than 147 million payments worth over \$142 billion under the COVID-Related Tax Relief Act of 2020; and more than 169 million payments worth approximately \$395 billion under ARPA. See IRS News Release, IR-2021-38, As Required by Law, All First and Second Economic Impact Payments Issued; Eligible People Can Claim Recovery Rebate Credit (Feb. 16, 2021), <https://www.irs.gov/newsroom/as-required-by-law-all-first-and-second-economic-impact-payments-issued-eligible-people-can-claim-recovery-rebate-credit>; IRS News Release, IR-2021-127, More Than 2.3 Million Additional Economic Impact Payments Disbursed Under the American Rescue Plan; Total Payments Top 169 million (June 9, 2021), <https://www.irs.gov/newsroom/more-than-2-point-3-million-additional-economic-impact-payments-disbursed-under-the-american-rescue-plan-total-payments-top-169-million>.

39 IRC § 6402.

40 The Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).

41 The Consolidated Appropriations Act, 2021, retroactively revised the CARES Act to direct the IRS to apply normal offset rules to the RRC. Under IRC § 6402(a), the IRS may credit the amount of an overpayment against any other internal revenue tax owed by the taxpayer. The IRS must reduce a taxpayer's overpayment by any amount the taxpayer owes in connection with any past-due child support; federal agency non-tax debts; state income tax obligations; and certain unemployment compensation debts owed to a state. IRC § 6402(c), (d), (e), (f).

the start of the filing season consistent with the legislation had their liabilities reduced by the RRC claimed. For those taxpayers, the IRS applied the RRC against their liability and extinguished the debt. Unlike EIPs, the RRC continued to be offset against other federal non-tax debts.<sup>42</sup>

### Economic Impact Payment Identity Theft

Every filing season, thousands of taxpayers are subjected to identity theft. This filing season, with the addition of EIPs, the number of taxpayers who have filed an identity theft claim with the IRS by submitting Form 14039, Identity Theft Affidavit, has significantly increased.

**FIGURE 6, Identity Theft Victim Assistance Inventory Comparing Fiscal Years Cumulative Statistics Through May 25, 2019; May 23, 2020; and May 22, 2021<sup>43</sup>**

	FY 2019	FY 2020	FY 2021	% Change 2019 to 2021	% Change 2020 to 2021
<b>Beginning Inventory</b>	31,659	14,633	56,726	79%	288%
<b>Receipts</b>	92,937	54,927	241,519	160%	340%
<b>Closures</b>	87,181	43,110	70,762	-19%	64%
<b>Ending Inventory</b>	37,415	26,450	227,483	508%	760%

The Identity Theft Victim Assistance (IDTVA) unit works such cases and received 241,519 identity theft cases in FY 2021 (through May 22, 2021).<sup>44</sup> This represents a 160 percent increase in case receipts for IDTVA from FY 2019 through May 25, and a 340 percent increase over the 54,927 case receipts for the same period in FY 2020.<sup>45</sup> Because the identity theft marker on a taxpayer's account is not specific, it is unclear how many of these instances can be attributed to EIP identity theft, but undoubtedly, they make up part of the increase. In reality, this increase could be even larger as taxpayers who did not receive an EIP through direct deposit as anticipated and who may suspect identity theft are not instructed to submit Form 14039, unlike taxpayers who anticipated receiving an EIP check and who suspect identity theft.<sup>46</sup> In both instances, the IRS does instruct taxpayers to submit Form 3911, Taxpayer Statement Regarding Refund, so the payment can be traced.<sup>47</sup> However, if the refund trace shows that an EIP was direct deposited to the account the IRS has on record, but the taxpayer does not control that account and the funds have since been withdrawn, the IRS will send Letter 129C informing the taxpayer it cannot refund the EIP, as it was directed to the account designated by the taxpayer.

42 Erin M. Collins, Update on Offset of Recovery Rebate Credits: The IRS Has Agreed to Exercise Its Discretion to Stop Offsets of Federal Tax Debts, NATIONAL TAXPAYER ADVOCATE BLOG (Mar. 15, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-update-on-offset-of-recovery-rebate-credits-the-irs-has-agreed-to-exercise-its-discretion-to-stop-offsets-of-federal-tax-debts/>.

43 IRS, JOC, CAS AM Paper Inventory Reports: IDTVA Report FY21 (week ending May 22, 2021); IRS, JOC, CAS AM Paper Inventory Reports: IDTVA Report FY 20 (week ending May 23, 2020); and IRS, JOC, CAS AM Paper Inventory Reports: IDTVA Report FY19 (week ending May 25, 2019).

44 IRS, JOC, CAS AM Paper Inventory Reports: IDTVA Report FY21 (week ending May 22, 2021).

45 IRS, JOC, CAS AM Paper Inventory Reports: IDTVA Report FY20 (week ending May 23, 2020); IRS, JOC, CAS AM Paper Inventory Reports: IDTVA Report FY19 (week ending May 25, 2019).

46 IRS, Questions and Answers About the Second Economic Impact Payment (Mar. 22, 2021), <https://www.irs.gov/coronavirus/second-eip-faqs#paymentlost>.

47 If the refund trace shows that the IRS sent an EIP as a paper check to the correct address but a person other than the taxpayer endorsed it, the Bureau of the Fiscal Service (BFS) will generally work to reissue the lost EIP to the taxpayer.



Unfortunately, Letter 129C does not inform taxpayers that they should file Form 14039 with the IRS if they suspect their EIP was stolen by an identity thief and deposited into an account they do not control, even though the IRS currently has procedures to work these types of cases.<sup>48</sup> Thus, we recommend that the IRS update its guidance to inform taxpayers that if they have filed Form 3911, if the IRS determines the EIP was deposited into an account the taxpayer does not control, and if the funds have been withdrawn, the taxpayers should file an identity theft claim via Form 14039.

## Other Tax Law Changes Impacted the 2021 Filing Season

Several other changes to the tax laws took place in the midst of the filing season as a result of the enactment of the Consolidated Appropriations Act, 2021, and ARPA. The three most significant benefits to taxpayers required adjustments to IRS programs:

1. The creation of the 2019 “Lookback Rule” for EITC and ACTC;
2. The partial exclusion of unemployment compensation benefits from income; and
3. Elimination of excess Advance Premium Tax Credit (APTC) repayments for tax year 2020.

### “Lookback Rule” for the Earned Income Tax Credit and Additional Child Tax Credit

The EITC is an important tax incentive for working individual taxpayers. The refundable tax credit helps low- to moderate-income workers and families reduce their tax liability and can result in a refund.<sup>49</sup> The Taxpayer Certainty and Disaster Tax Relief Act of 2020 in the Consolidated Appropriations Act, 2021, provided temporary relief for taxpayers who earned less income in 2020 than 2019.<sup>50</sup> Specifically, the provision allows taxpayers to elect to use their 2019 earned income to calculate EITC and the refundable ACTC, if the taxpayers’ 2019 earned income is larger than the 2020 earned income, resulting in higher credits.<sup>51</sup>

While the lookback rule was intended to benefit individual taxpayers who experienced a drop in earned income during the pandemic, a significant number of these taxpayers also experienced a delay in receiving their much-needed refunds. The delay was caused by IRS manual processes used to validate the 2019 income for the credit amount calculation.<sup>52</sup> Due to the late passage of the law, the IRS was unable to timely adjust its computer systems before the start of the 2021 filing season to enable systemic processing of returns where taxpayers elected to use their 2019 income. Verification of the 2019 lookback election had to be manually processed by the ERS unit, requiring the IRS to place associated returns in “suspense” until an IRS employee could review them. Essentially, the return was in a queue waiting for the IRS to review and process it. During this time, IRS systems did not indicate why it was holding the return, adding more frustration as neither taxpayers nor IRS employees could determine the status while in the queue. As of May 20, 2021, almost 567,000 2020 returns calculated EITC using 2019 earned income. These returns claimed about \$2.3 billion in EITC. In addition, there were over 2.5 million taxpayers who used 2020 earned income but would have received about \$2.7 billion more in EITC had they used the 2019 income. In about 251,000 2020

48 See Internal Revenue Manual (IRM) 25.23.12.5.10(7), Identity Theft - Economic Impact Payments (EIP) (Mar. 19, 2021).

49 IRC § 32. Working families with three or more qualifying children could be eligible for a credit up to \$6,660. Workers without a qualifying child could receive up to \$538. See IRS Pub. 596, Earned Income Credit (EIC), 31-39 (Jan. 26, 2021).

50 The Taxpayer Certainty and Disaster Tax Relief Act of 2020, Pub. L. No. 116-260, Div. EE, § 211, 134 Stat. 1182, 3066 (2020).

51 To make this election, the taxpayer enters “PYEI” and the amount of the 2019 earned income on the dotted line next to Form 1040 or Form 1040-SR, line 27 (for EITC) and line 28 (for ACTC). IRS, Tax Year 2020 Form 1040 and Form 1040-SR Instructions 41, 57 (rev. Apr. 2021); IRS Pub. 596, Earned Income Credit (EIC), 18 (Jan. 26, 2021).

52 Erin M. Collins, 2021 Filing Season Bumps in the Road: Part I, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 22, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-2021-filing-season-bumps-in-the-road-part-1/>.



returns, taxpayers calculated ACTC based on their 2019 earned income. The total ACTC received by these taxpayers was about \$233.3 million. In addition, there were over 66,000 taxpayers who used 2020 earned income but would have received \$18.2 million more in ACTC had they used the 2019 income.<sup>53</sup>

### Unemployment Benefits Exclusion

Under the law, taxpayers may exclude from taxation up to \$10,200 for each taxpayer who received unemployment compensation (up to \$20,400 for married couples filing joint returns) if their modified adjusted gross income (AGI) was under \$150,000.<sup>54</sup> However, the law was enacted on March 11, 2021, about a month into the filing season, and by that time 43 percent of all 2020 individual income tax returns had been filed with the IRS.<sup>55</sup> The IRS worked quickly to modify its systems to account for these changes and also worked with tax return preparation software companies to make the necessary changes to their products. On March 31, the IRS announced it would automatically recompute any deficiencies or refunds for these taxpayers. This was beneficial for taxpayers who already filed and computed their taxes based on the full amount of unemployment compensation. As a result of the systemic solution, taxpayers will not have the burden of filing an amended return, and the IRS will not have the added burden of processing millions of amended returns before issuing refunds.

In late May, the IRS began making computations systemically and began issuing the additional payments the computations generated (*i.e.*, taxpayers may have received a refund earlier in the filing season and will now receive an additional payment as a result of this adjustment). As of June 4, the IRS had already sent more than 2.8 million refunds to such taxpayers.<sup>56</sup> Further, when making the computation adjustment for unemployment compensation, the IRS also adjusted any credits claimed on the returns, such as EITC or ACTC, that were affected by this computation. Except for the childless worker EITC, the IRS did not elect any credits for taxpayers even if they were eligible once the computation was completed.<sup>57</sup> However, the IRS is unable to calculate all other federal credits or deductions *not* claimed on the original tax return for taxpayers with qualifying children who might *now* be eligible for that credit. These taxpayers will need to file amended returns *if* they did not originally claim the EITC with qualifying children or other federal credits but now are eligible because the exclusion reduced their AGI.

### Elimination of Payment of Excess Advance Premium Tax Credit

Under certain circumstances, taxpayers with a qualified health plan purchased through a health insurance marketplace may receive an advance payment of the Premium Tax Credit (PTC) to reduce the cost of their monthly premiums. At the end of the year, the taxpayer must reconcile the APTC to ensure that the amount received equals the PTC to which the taxpayer is entitled. If the APTC received is greater than the PTC

53 IRS Compliance Data Warehouse (CDW), Individual Returns Transaction File for tax year 2020 returns filed through May 20, 2021. TAS Research estimated EITC and ACTC for tax year 2020 individual tax returns where the earned income in 2019 was greater than the 2020 earned income.

54 ARPA, Pub. L. No. 117-2, Part 4 § 9042(a), 135 Stat. 4 (2021); IRS, New Exclusion of Up to \$10,200 of Unemployment Compensation, <https://www.irs.gov/forms-pubs/new-exclusion-of-up-to-10200-of-unemployment-compensation> (last visited June 16, 2021).

55 As of the week ending March 12, 2021, the IRS had received about 66.1 million returns. IRS, Filing Season Statistics for Week Ending March 12, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-march-12-2021> (last visited May 27, 2021). The three-year average of the number of federal individual income tax returns filed for tax years 2017, 2018, and 2019 (less returns filed solely for the purpose of receiving economic incentive payments) is 153.1 million. IRS CDW, Individual Returns Transaction File (Apr. 29, 2021).

56 IRS, IR-2021-123, IRS Sending More Than 2.8 Million Refunds to Those Who Already Paid Taxes on 2020 Unemployment Compensation (June 4, 2021), <https://www.irs.gov/newsroom/irs-sending-more-than-2-point-8-million-refunds-to-those-who-already-paid-taxes-on-2020-unemployment-compensation>.

57 IRM 25.23.4.20.5, Recovery Rebate Credit (RRC) – Adjustments.

claimed on the tax return, the excess APTC increases the taxpayer's tax liability for that tax year.<sup>58</sup> Conversely, if the PTC for which the taxpayer is eligible exceeds the APTC received, the taxpayer claims a credit for the difference on his or her return. Both of these adjustments are reconciled on Form 8962, Premium Tax Credit.

ARPA allowed taxpayers the benefit of suspending the requirement that they increase their tax liability by all or a portion of their excess APTC for 2020.<sup>59</sup> Taxpayers with excess APTC for 2020 did not need to file Form 8962 with their return or repay this excess amount on their 2020 Form 1040, U.S. Individual Income Tax Return, or Form 1040-SR, U.S. Tax Return for Seniors, when they filed.<sup>60</sup> Those taxpayers who had filed and paid their excess APTC in advance of the law being changed did not need to file an amended return. Similar to the systemic fix for the unemployment benefit exclusion, the IRS reduced the taxpayers' excess APTC amount to zero, thereby adjusting their liability, and automatically reimbursed those taxpayers. This positive systemic fix freed up time and resources for both the IRS and taxpayers.

### Limited Volunteer Tax Return Preparation Services Available to Taxpayers

The IRS Volunteer Income Tax Assistance (VITA) program and the Tax Counseling for the Elderly (TCE) program are vital programs for taxpayers and tax administration. VITA offers free tax return preparation assistance to people who generally make \$57,000 or less, persons with disabilities, and limited English-speaking taxpayers who need assistance in preparing their own tax returns, and TCE provides free tax help for individuals age 60 and older.<sup>61</sup> Many taxpayers depend on the services offered by these two programs to meet their income tax return filing requirements, receive EIPs, and claim RRCs. This filing season, volunteers once again provided much needed assistance under difficult circumstances and should be recognized for going above and beyond.

Unfortunately, however, assistance provided by volunteers significantly decreased as many individuals were dealing with the safety and logistical issues presented by the pandemic. Many VITA and TCE sites could not operate at full capacity during the 2020 and 2021 filing seasons.<sup>62</sup> In mid-January 2021, the number of volunteers trained and certified to staff VITA and TCE sites was understandably almost 30 percent less than the number at the same time in 2020 (pre-COVID-19).<sup>63</sup> In addition, many site locations closed as planned on April 15 and did not extend their operations to accommodate the postponed May 17 filing season.<sup>64</sup>

Figure 7 shows the drop in VITA and TCE returns filed during the 2018 to 2021 filing seasons.

<sup>58</sup> IRC § 36B(f)(2)(A).

<sup>59</sup> Taxpayers who claim a net PTC still need to file a Form 8962. This change only applies to tax year 2020.

<sup>60</sup> IRS, IR-2021-84, IRS Suspends Requirement to Repay Excess Advance Payments of the 2020 Premium Tax Credit; Those Claiming Net Premium Tax Credit Must File Form 8962 (Apr. 9, 2021), <https://www.irs.gov/newsroom/irs-suspends-requirement-to-repay-excess-advance-payments-of-the-2020-premium-tax-credit-those-claiming-net-premium-tax-credit-must-file-form-8962>. Note: Taxpayers claiming a net PTC will still need to file a Form 8962.

<sup>61</sup> IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers> (last visited Apr. 27, 2021).

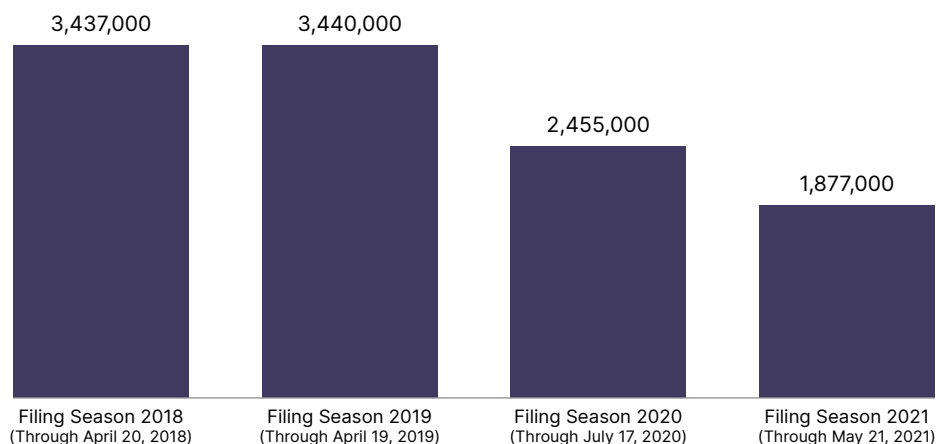
<sup>62</sup> TIGTA, Ref. No. 2021-46-029, *Assessment of the Effects of the Coronavirus Pandemic on Customer Service Operations* 5, 7, 18-20 (Apr. 22, 2021); IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers> (last visited Apr. 27, 2021).

<sup>63</sup> W&I, Business Performance Review Q1 FY 2021, at 7 (Feb. 2021) (about 37,000 VITA/TCE volunteers as of January 12, 2021); W&I, Business Performance Review Q1 FY 2020, at 5 (Feb. 2020) (about 52,000 VITA/TCE volunteers as of early January).

<sup>64</sup> Meeting between TAS and W&I Customer Assistance, Relationships, and Education (CARE) (Apr. 2021).

**FIGURE 7<sup>65</sup>**

**Individual Returns Prepared by Volunteer Services  
for 2018 to 2021 Filing Seasons**



As Figure 7 indicates, another devastating impact of COVID-19 was the 45 percent decline of returns prepared at volunteer sites from the 2018 season to the 2021 filing season. One silver lining was the IRS Commissioner authorized Low Income Taxpayer Clinics (LITCs) to provide free tax return preparation services during both the 2020 and 2021 filing seasons in recognition of the potential impact on taxpayers who use VITA and TCE.<sup>66</sup>

Taxpayers who needed to file a prior year return, such as a 2019 return, may have faced difficulties finding free tax return preparation services. Some VITA and TCE sites prepare only current year tax returns. However, the IRS encouraged VITA and TCE sites with sufficient capacity to prepare prior-year tax returns during the 2021 filing season. The IRS's VITA Locator on IRS.gov identified whether a site prepared prior-year returns.<sup>67</sup>

To ensure the health and safety of taxpayers and volunteers, some volunteer tax return preparation sites offered virtual help to taxpayers, either over the phone or online; however, the benefit of VITA and TCE this filing season was seriously hampered by the pandemic. The National Taxpayer Advocate would like to recognize and thank those individuals who volunteered this year despite the challenges as their efforts assisted taxpayers who filed almost 1.9 million returns.<sup>68</sup> This is yet another reminder of how Americans stepped up and gave back to those in need during the pandemic.

65 IRS, 2019 Weekly Individual Filing Season Report, Cumulative Statistics Comparing Apr. 20, 2018 and Apr. 19, 2019 for 2018 and 2019 filing seasons; IRS, 2020 Weekly Individual Filing Season Report, Cumulative Statistics Comparing July 19, 2019 and July 17, 2020 for 2020 filing season; IRS, 2021 Weekly Individual Filing Season Report, Cumulative Statistics Comparing May 22, 2020 (Day 117 of 2020 Filing Season) and May 21, 2021 (Day 99 of 2021 Filing Season) for 2021 filing season.

66 *Filing Season and COVID-19 Recovery, Hearing Before the S. Comm. on Fin.*, 117th Cong. (Apr. 13, 2021) (written statement of Charles P. Rettig, Commissioner of Internal Revenue); TIGTA, Ref. No. 2021-46-029, *Assessment of the Effects of the Coronavirus Pandemic on Customer Service Operations* 18-19 (Apr. 22, 2021). While LITCs are not prohibited from providing free tax return preparation services, it has been a longstanding policy that the LITCs should prepare current year tax returns only in limited circumstances.

67 TIGTA, Ref. No. 2021-46-029, *Assessment of the Effects of the Coronavirus Pandemic on Customer Service Operations* 21 (Apr. 22, 2021).

68 IRS, 2021 Weekly Individual Filing Season Report, Cumulative Statistics Comparing May 22, 2020 (Day 117 of 2020 Filing Season) and May 21, 2021 (Day 99 of 2021 Filing Season) for 2021 filing season.

## Other Filing Season Challenges

Adding insult to injury, taxpayers and the IRS faced additional obstacles during the 2021 filing season including identity verification; backlog in processing authorizations; lack of working printers and copiers; closure of the Federal Records Center (FRC); limited in-person taxpayer interaction with the IRS; limited online and self-service tools; and lack of service options for taxpayers living abroad.

### Identity Verification

The IRS passes all tax returns claiming refunds through a variety of filters and rules to flag returns that appear disproportionately likely to have been filed by identity thieves. Returns selected by these filters are suspended from processing and worked in the Taxpayer Protection Program (TPP). Taxpayers are notified to authenticate their identity by contacting the TPP toll-free telephone number, going online, or visiting a Taxpayer Assistance Center (TAC). As of May 20, 2021, the TPP had selected over 3.7 million suspicious tax returns this filing season, nearly triple the 1.3 million returns selected during 2019 filing season.

**FIGURE 8, Taxpayer Protection Program Selections, Authenticated, or Confirmed Identity Theft for Filing Seasons 2019, 2020, and 2021<sup>69</sup>**

	Filing Season (Through April 18, 2019)	Filing Season (Through July 16, 2020)	Filing Season (Through May 20, 2021)
<b>Selections</b>	1,300,264	1,904,339	3,738,160
<b>Authenticated</b>	488,637	425,697	530,393
<b>Confirmed Identity Theft</b>	16,515	17,848	32,034

Taxpayers with returns selected by the TPP may feel exasperated when they try to call the TPP toll-free telephone line. The TPP toll-free telephone line received nearly six million calls this filing season, and the LOS on the line was just 19 percent.<sup>70</sup> During the week of May 22, 2021, the LOS was less than ten percent for over 600,000 attempted calls. It is not surprising that only 530,393 taxpayers successfully authenticated their identities as of May 20, 2021.<sup>71</sup>

### Backlog in Processing Third-Party Authorizations

Taxpayers and third parties experienced significant delays with the IRS processing authorizations, including Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information

<sup>69</sup> TPP Combined Report 3 (May 20, 2021); TPP Combined Report 3 (July 16, 2020); TPP Combined Report 3 (Apr. 18, 2019). The IRS released an additional 878,812 returns in 2021; 107,946 returns in 2020; and 11,116 returns in 2019 due to receipt of additional Information Returns Processing data or filter reprogramming.

<sup>70</sup> IRS, JOC, Taxpayer Protection Program Snapshot (week ending May 22, 2021).

<sup>71</sup> TPP Combined Report 3 (May 17, 2021).

Authorization.<sup>72</sup> This issue has persisted since the 2020 filing season. The IRS has taken several actions to address the issue:

- *Paperless Fax Capabilities.* In October 2020, the Wage and Investment Division worked with IRS Information Technology (IT) to deploy paperless fax capabilities in the Centralized Authorization File (CAF) Unit to allow employees to process CAF applications using their laptops and desktops at telework locations.<sup>73</sup>
- *Electronic Submission of Authorizations.* In January 2021, the IRS launched a new online tool for professionals to provide the ability to remotely obtain signatures from individual and business clients and submit Forms 2848 and 8821 electronically. The new Submit Forms 2848 and 8821 Online tool provides a secure platform to upload the forms signed by taxpayers and tax professionals either electronically or in ink. The uploaded documents are then sent to the CAF Unit for standard review and processing.<sup>74</sup>
- *Tax Pro Account.* The IRS plans to launch an online account application for professionals called Tax Pro in July 2021. The application will facilitate the online execution and filing of Forms 2848 and 8821 and will interface with the online account of the tax professional's individual taxpayer clients. Uploaded authorizations will transmit directly to the CAF Unit.<sup>75</sup>

The CAF Unit is working to reduce the backlog of authorizations and is processing submissions received by mail, fax, and the new online submission platform in the order in which they were received.<sup>76</sup>

### Lack of Working Printers and Copiers Exacerbate Backlog Issues

The Treasury Inspector General for Tax Administration (TIGTA) reported that the lack of working printers and copiers in several IRS Tax Processing Centers exacerbated the agency's backlog problems. As of March 30, 2021, approximately 42 percent of the printers and copiers of IRS Submission Processing functions were unusable or broken. This issue significantly affects the Return and Income Verification Services functions that process requests for tax return and account information transcripts, verification of non-filing, and requests for wage and income information. The IRS assured TIGTA that IRS IT was resolving the issue and had started to replace malfunctioning devices.<sup>77</sup>

### Closure of the Federal Records Center

The IRS stores tax returns and other tax records at FRC locations.<sup>78</sup> Like many federal agencies, FRC closed at the beginning of the national emergency in March 2020. FRC started to address emergency requests in

72 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Apr. 30, 2020).

73 W&I, Business Performance Review Q1 FY 2021, at 19 (Feb. 2021).

74 IRS Deputy Commissioner Services and Enforcement, IRS Source, News and Events, IRS to Offer Electronic Signature Solutions for Third-Party Authorization Forms (Oct. 30, 2020); IRS, Submit Forms 2848 and 8821 Online, <https://www.irs.gov/tax-professionals/submit-forms-2848-and-8821-online> (last visited Apr. 30, 2021).

75 W&I, Business Performance Review Q1 FY 2021, at 4 (Feb. 2021).

76 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Apr. 30, 2021); IRS SERP Alert 21A0105, Authorization Form Timeframe (Mar. 3, 2021).

77 TIGTA, Ref. No. 2021-40-038, *Interim Results of the 2021 Filing Season 8* (May 6, 2021).

78 IRS, Records Control Schedules, Document 12990 (Nov. 2017).

March 2021<sup>79</sup> and reopened with limited staffing (50 percent or less) on May 28, 2021.<sup>80</sup> The limited staffing of FRC will significantly impact IRS operations. For example, Submission Processing functions need tax records to fulfill requests for copies of tax returns and some IRS functions need tax records to timely work assigned inventory.<sup>81</sup>

Limited FRC operations have also provided another use for some of the trailers once used to store unopened IRS mail at tax processing centers. As of March 31, 2021, IRS tax processing centers were using about seven trailers to store documents waiting to be sent to FRC.<sup>82</sup>

### Face-to-Face Service at Taxpayer Assistance Centers

The IRS provides face-to-face assistance to taxpayers in the 50 states, the District of Columbia, and Puerto Rico at TACs. Over the past decade, the IRS has reduced the number of TACs from 401 (in 2011) to 358.<sup>83</sup> As of the week of May 3, 2021, only 287 TACs were open, as 71 locations were unstaffed or closed due to COVID-19-related issues for the 2021 filing season.<sup>84</sup>

The IRS continued its policy of requiring taxpayers to schedule an appointment to receive assistance at any of its TACs.<sup>85</sup> To schedule an appointment, taxpayers are to call the TAC Appointment line, where an assistor determines the taxpayer's need and directs the taxpayer to resources where he or she may find answers to his or her questions.<sup>86</sup> This filing season, there were 351,000 scheduled appointments for face-to-face assistance at TACs, a decrease of 43 percent compared to the 2018 filing season.

79 IRS SERP Alert 21A0142, Files Areas – Status of Operations (Mar. 18, 2021) (emergency requests include those supporting the carrying out the constitutional duties of the Congress and the President, law enforcement activities, health and safety of life or property of the government, response to natural or man-made disasters, or similar necessary implications of supporting continuing federal activities).

80 IRS SERP Alert 21A0174, Files Area / FRCs; Status of Operations (May 28, 2021).

81 TIGTA, Ref. No. 2021-40-038, *Interim Results of the 2021 Filing Season 10* (May 6, 2021).

82 TIGTA, Ref. No. 2021-40-038, *Interim Results of the 2021 Filing Season 8* (May 6, 2021).

83 See Government Accountability Office (GAO), GAO-12-176, *Processing Gains, but Taxpayer Assistance Could Be Enhanced by More Self-Service Tools* (Dec. 2011); *Review of the FY 2020 Budget Request for the U.S. Department of Treasury: Hearing Before the S. Subcomm. on Financial Services and General Government of the S. Comm. on Appropriations*, 116th Cong. (2019) (written statement of Charles P. Rettig, Commissioner of Internal Revenue).

84 Data from IRS systems and W&I (May 21, 2021). TAC data as of the week of May 3, 2021.

85 IRS, IR 2019-67, IRS.gov: Best Place to Get Last-Minute Tax Tips and Resources (Apr. 9, 2019), <https://www.irs.gov/newsroom/irsgov-best-place-to-get-last-minute-tax-tips-and-resources>.

86 IRM 21.1.1.3, Customer Service Representative (CSR) Duties (Oct. 1, 2018).

**FIGURE 9, Face-to-Face Assistance, Filing Seasons 2018-2021<sup>87</sup>**

	Filing Season 2018 (Through April 20, 2018)	Filing Season 2019 (Through April 19, 2019)	Filing Season 2020 (Through July 17, 2020)	Filing Season 2021 (Through May 21, 2021)	% Change 2018 to 2021
Face-to-Face Appointments (scheduled by AM phone calls)	619,000	536,000	364,000	351,000	-43%
Walk-in Exceptions (no scheduled appointment)	60,000	87,000	37,000	1,964	-97%

In limited instances, taxpayers may receive assistance from a TAC without an appointment. This filing season, 1,964 taxpayers were assisted at TACs without an appointment because of openings in the day's calendar or as staffing permitted, down 97 percent from the 2018 filing season.<sup>88</sup> The appointment-only approach can negatively impact taxpayers who need assistance urgently and cannot wait to obtain an appointment.<sup>89</sup> TAS is pleased that the IRS's guidance to employees includes managerial discretion to assist taxpayers without appointments if the taxpayer has a hardship or can be assisted without affecting other scheduled appointments.<sup>90</sup> However, serving taxpayers without appointments remains an exception.

Prior to the COVID-19 pandemic, the IRS began an initiative to virtually assist taxpayers through web-based software. The IRS resumed this pilot program on October 30, 2020, ramping up to 16 assistors during the 2021 filing season. As of March 5, 2021, 521 taxpayers had participated in this virtual assistance program.<sup>91</sup> While we are pleased the IRS has undertaken this pilot, it will have to be ramped up considerably to meet the needs of a broader segment of taxpayers.

### Online and Self-Service Tools

Online tools have become a more significant part of the filing season experience. Broadly speaking, there are two categories of online tools: general access tools and taxpayer account tools.

General access tools allow taxpayers to obtain general information that is not case-specific. A few examples of what a taxpayer might accomplish on the IRS website (IRS.gov) include:

- Downloading tax forms, instructions, and publications;<sup>92</sup>

87 IRS, 2019 Weekly Individual Filing Season Report, Cumulative Statistics Comparing Apr. 20, 2018 and Apr. 19, 2019; IRS, 2020 Weekly Individual Filing Season Report, Cumulative Statistics Comparing July 19, 2019 and July 17, 2020; IRS, 2021 Weekly Individual Filing Season Report, Cumulative Statistics Comparing May 22, 2020 (Day 117 of 2020 Filing Season) and May 21, 2021 (Day 99 of 2021 Filing Season).

88 IRS, 2019 Weekly Individual Filing Season Report, Cumulative Statistics Comparing Apr. 20, 2018 and Apr. 19, 2019; IRS, 2020 Weekly Individual Filing Season Report, Cumulative Statistics Comparing July 19, 2019 and July 17, 2020; IRS, 2021 Weekly Individual Filing Season Report, Cumulative Statistics Comparing May 22, 2020 (Day 117 of 2020 Filing Season) and May 21, 2021 (Day 99 of 2021 Filing Season).

89 W&I, Business Performance Review Q2 FY 2019, at 15 (Apr. 30, 2019). The IRS will, in some circumstances, "double book" an appointment if the taxpayer has an urgent need. However, this will happen only when the taxpayer is able to explain the need, and the phone assistor is able to recognize the urgency. There are exception criteria for taxpayers who show up at a TAC without an appointment. Likewise, the taxpayer will need to explain the need, and a TAC employee needs to recognize the taxpayer should receive service.

90 IRM 21.3.4.2.4.2, TAC Appointment Exception Procedures (Oct. 1, 2018).

91 TIGTA, Ref. No. 2021-40-038, *Interim Results of the 2021 Filing Season 24* (May 6, 2021).

92 IRS, Forms & Publications, <https://www.irs.gov/forms-pubs> (last visited May 28, 2021).



- Locating the TAC nearest to where the taxpayer lives;<sup>93</sup> and
- Using the Interactive Tax Assistant to find answers to general tax law questions such as who may be claimed as a dependent or whether a taxpayer may deduct medical expenses.<sup>94</sup>

Taxpayer account tools allow users to obtain account information or access personalized features. Taxpayers wishing to access account tools must pass “multi-factor authentication.” This security measure is intended to ensure the person requesting access is the true taxpayer and not an imposter. For example, to access an account transcript online for the first time, the taxpayer will need:

- His or her taxpayer identification number, date of birth, filing status, and mailing address from the latest tax return;
- An email account;
- An account number from a credit card, mortgage, home equity loan, home equity line of credit, or car loan; and
- A cell phone with the taxpayer’s name on the account (*i.e.*, not pay-as-you-go minutes).

After the user enters some initial information to validate his or her identity, the IRS will send a temporary security code via text message to the taxpayer’s cell phone.<sup>95</sup>

Once authenticated, taxpayers can assess the following account tools:

- Get Transcript, where the taxpayer can view tax account information;<sup>96</sup>
- Direct Pay, where the taxpayer can make payments to the IRS;<sup>97</sup> and
- Online Account, where the taxpayer may view payment history and remaining balance due for certain tax years.<sup>98</sup>

### Service Options for U.S. Taxpayers Living Abroad

For U.S. citizens or resident aliens, the rules for filing income tax returns and paying estimated tax are generally the same whether they are in the United States or abroad; worldwide income is subject to U.S. income tax, regardless of where they reside. Approximately nine million U.S. citizens live abroad.<sup>99</sup> There are also many international U.S. taxpayers who are neither residents nor citizens of the United States.

One particular challenge for taxpayers living abroad is the reduced services offered by the IRS to this community. Taxpayers living abroad generally cannot call U.S. toll-free telephone lines. In 2015, the IRS closed the last of its overseas tax attaché offices, which eliminated the last face-to-face option for U.S.

93 IRS, Contact Your Local IRS Office, <https://www.irs.gov/help/contact-your-local-irs-office> (last visited May 28, 2021).

94 IRS, Interactive Tax Assistant (ITA), <https://www.irs.gov/uac/interactive-tax-assistant-ita-1> (last visited May 28, 2021).

95 The taxpayer has the option of requesting that the activation code be mailed to the address of record. IRS, Secure Access: How to Register for Certain Online Self-Help Tools, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited June 21, 2021). However, waiting ten days for mail delivery of the activation code hinders the taxpayer’s ability to immediately resolve the issue.

96 IRS, Welcome to Get Transcript, <https://www.irs.gov/individuals/get-transcript> (last visited May 28, 2021).

97 IRS, Direct Pay With Bank Account, <https://www.irs.gov/payments/direct-pay> (last visited May 28, 2021).

98 IRS, View Your Tax Account Information, <https://www.irs.gov/uac/view-your-tax-account> (last visited May 28, 2021).

99 See U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers* (rev. Jan. 2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>.



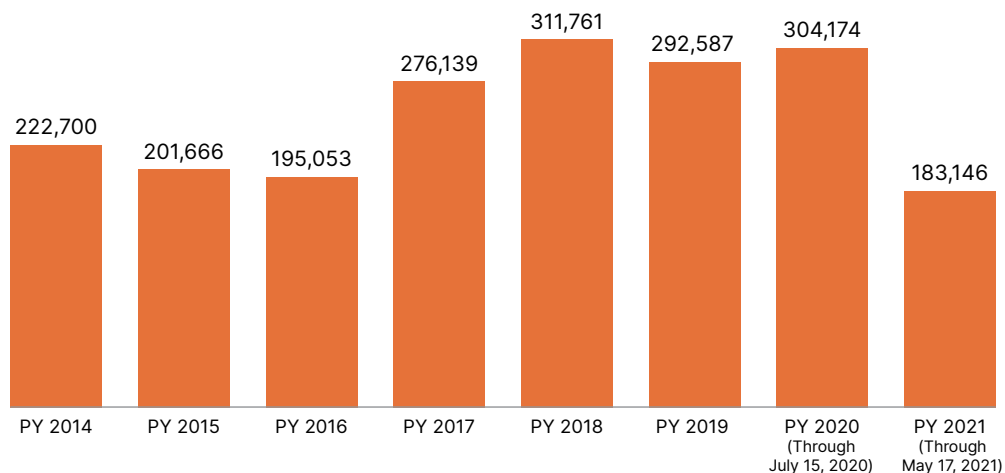
taxpayers living abroad, leaving these taxpayers with limited options for assistance.<sup>100</sup> The IRS has designated its Philadelphia office to provide international tax assistance Monday through Friday from 6 a.m. to 11 p.m. EST; international taxpayers may call 267-941-1000 (not a toll-free number).<sup>101</sup> In addition, the IRS has posted an FAQs page to provide international taxpayers with basic information on its website.<sup>102</sup>

One unintended disadvantage for taxpayers living abroad is the inability to access IRS services that require authentication, such as Online Account or the Identity Protection Personal Identification Number (IP PIN). The authentication process for both Online Account and IP PIN registration requires a valid U.S. phone number; taxpayers without a U.S. phone number may encounter difficulties authenticating.

An alien is any individual who is not a U.S. citizen or U.S. national. A nonresident alien is an alien who has not passed the green card test or the substantial presence test.<sup>103</sup> Nonresident aliens with a tax filing obligation file Form 1040-NR, U.S. Nonresident Alien Income Tax Return. Figure 10 shows the trend in the volume of Forms 1040-NR filed during processing years (PYs) 2014 to PY 2021.

**FIGURE 10<sup>104</sup>**

**Forms 1040-NR, U.S. Nonresident Alien Income Tax Return,  
Filed During the Filing Season for Processing Years 2014-2021**



<sup>100</sup> For a detailed discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).

<sup>101</sup> IRS, U.S. Citizens and Resident Aliens Abroad, <https://www.irs.gov/individuals/international-taxpayers/us-citizens-and-resident-aliens-abroad> (last visited June 15, 2021).

<sup>102</sup> See IRS, Frequently Asked Questions (FAQs) About International Individual Tax Matters, <https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-about-international-individual-tax-matters> (last visited June 15, 2021).

<sup>103</sup> IRC § 7701(b)(1)(B).

<sup>104</sup> IRS CDW, Individual Return Transaction File Form 1040-NR, U.S. Nonresident Alien Income Tax Return (PY 2014 returns filed through Apr. 24, 2014; PY 2015 returns filed through Apr. 30, 2015; PY 2016 returns filed through Apr. 28, 2016; PY 2017 returns filed through Apr. 27, 2017; PY 2018 returns filed through Apr. 26, 2018; PY 2019 returns filed through Apr. 25, 2019; PY 2020 returns filed through July 16, 2020; PY 2021 returns filed through May 20, 2021).

There has been a significant decrease in Forms 1040-NR received, from a high of 311,761 returns received in 2018, to 183,146 returns received this year — a decrease of 41 percent.<sup>105</sup> It is unclear why there has been such a steep drop-off. During the current and past filing seasons, the IRS has been slow in processing paper returns; also, COVID-19 affected individuals globally and may have had some effect in the timing of their filings. As of May 22, 2021, six million 2020 individual paper returns await processing.<sup>106</sup>

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<sup>105</sup> IRS CDW, Individual Return Transaction File Form 1040-NR, U.S. Nonresident Alien Income Tax Return (PY 2014 returns filed through Apr. 24, 2014; PY 2015 returns filed through Apr. 30, 2015; PY 2016 returns filed through Apr. 28, 2016; PY 2017 returns filed through Apr. 27, 2017; PY 2018 returns filed through Apr. 26, 2018; PY 2019 returns filed through Apr. 25, 2019; PY 2020 returns filed through July 16, 2020; PY 2021 returns filed through May 20, 2021). The IRS processed 183,146 Forms 1040-NR during the 2021 processing year through May 20, 2021 (including returns from earlier tax years than 2020), and processed 311,761 Forms 1040-NR during the 2018 processing year through April 26, 2018 (including returns from earlier tax years than 2017).

<sup>106</sup> Data from IRS systems and W&I.

## TAS Systemic Advocacy Objectives

### INTRODUCTION

IRC § 7803(c)(2)(B)(i) requires the National Taxpayer Advocate to annually submit a report to Congress that describes the objectives outlined by the Office of the Taxpayer Advocate for the coming fiscal year (FY) by June 30. This report is known as the Objectives Report. The following sections present TAS's key goals and planned activities for FY 2022 in three areas: Systemic Advocacy Objectives, TAS Case Advocacy and Other Business Objectives, and TAS Research Objectives.

Systemic Advocacy Objectives describe the objectives TAS will pursue to address systemic issues causing taxpayer burden or harm. Similar to the way Most Serious Problems are identified in the Annual Report to Congress, the National Taxpayer Advocate calls upon a multitude of sources to assist in identifying Systemic Advocacy Objectives including the experience of TAS staff, trends in advocacy efforts and TAS casework, and interactions with practitioners and external stakeholders.

TAS Case Advocacy and Other Business Objectives describe activities TAS will pursue to advance its advocacy efforts for individual taxpayers through casework. This section also details planned TAS activities for organizational improvement and promotion of its advocacy efforts. Local case advocates work directly with taxpayers on identifying issues, researching solutions, and advocating on taxpayers' behalf within the IRS. TAS's goal is to continuously improve its internal processes and business operations on behalf of taxpayers.

TAS Research Objectives focus on understanding how IRS procedures and tax laws affect taxpayers and how taxpayers react to IRS actions. The objectives of TAS Research are to improve IRS operations and assist the IRS with balancing its compliance efforts with taxpayer rights. Four research projects are scheduled for FY 2022.

### 1. IMPROVE IRS RECRUITMENT, HIRING, AND RETENTION STRATEGIES

The IRS's success relies heavily upon its workforce and employee skillsets to accomplish its mission and provide quality taxpayer service. Therefore, it is imperative the IRS not only receive the funding necessary to support programs but also be able to attract, hire, and retain the right individuals to deliver these programs. The size of the IRS workforce has declined significantly since FY 2010.<sup>1</sup> During this decline, the IRS has been unable to keep pace with its projected hiring, causing positions that help carry out its crucial mission of tax administration to go unfilled.<sup>2</sup> Nearly 5,600 employees on average leave the IRS each year for the private sector or another job;<sup>3</sup> when added to the number of employees eligible to retire, approximately 32 percent of

1 The number of full-time equivalent (FTE) positions declined from 94,711 in FY 2010 to 73,554 in FY 2019. IRS, 2019 Data Book, Table 31: Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1990-2019 (2020).

2 Between FYs 2017 and 2019, the IRS failed to hire over 5,000 FTEs for which it had allocated funding. Chief Financial Office (CFO) FY 2017-2020 Operational Plan vs. Actual Full-Time Equivalent (FTE); IRS response to TAS information request (Sept. 16, 2020) (Derived from: Integrated Financial System).

3 Each year on average, 5,576 employees leave the IRS. IRS HCO, IRS Gains and Losses Report by BOD FYs 2017-2020 Pay Period 17; IRS response to TAS information request (Oct. 2, 2020). This data was derived from IRS National Finance Center (NFC) transactions from Oct. 2, 2016 to Aug. 29, 2020 (Dashboard available internally to IRS).

employees could leave the IRS over the next year.<sup>4</sup> If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to the U.S. Treasury and indirectly harm taxpayer services and voluntary compliance.

All IRS hiring is centralized under the Human Capital Office (HCO), including staffing that supports hiring in the IRS's Business Operating Divisions (BODs). With the decline in IRS budgets over recent years, the staffing of HCO's employment office that supports BOD hiring has also declined.<sup>5</sup> HCO has taken steps to mitigate this by hiring additional staff and implementing organizational and process changes. However, the National Taxpayer Advocate is concerned that a potential ten percent increase<sup>6</sup> in IRS funding in FY 2022 will leave HCO unprepared to manage the increased hiring demand without additional resources. This may lead to HCO having to prioritize certain hiring over the total need of the IRS.

**Objective 1 for FY 2022 – TAS will continue to dialogue with the IRS about hiring, recruitment, and retention and will review IRS HCO strategies for measurable improvement and strategies, and if appropriate, make recommendations for improvement.**

- Activity 1: Continue to advocate for adequately sustained, multiyear funding to allow for increased IRS hiring capacity and to overcome employee attrition.
- Activity 2: Determine if “direct-hire” is needed, and if so, continue to advocate for additional “direct-hire” authority.
- Activity 3: Review changes HCO has implemented to determine if it achieved measurable results to the improvement of the hiring process. This could include making recommendations for further change and improvement.
- Activity 4: Collaborate with HCO, assist and comment on its plans for recruitment and hiring, and make recommendations that will meet the upcoming IRS hiring challenges while also increasing its level of customer service for taxpayers and stakeholders.

## **2. COLLABORATE WITH THE IRS IN THE DEVELOPMENT OF ITS TRAINING STRATEGY TO ENHANCE THE TAXPAYER EXPERIENCE**

As required by the Taxpayer First Act (TFA), in January 2021, the IRS submitted its Taxpayer First Act Report to Congress.<sup>7</sup> The report outlines the IRS's vision for a new training strategy, among other strategic plans required by TFA. The IRS training strategy includes creating a centralized educational organization, or “IRS University,” and developing “Taxpayer-First Training.” Taxpayer-First Training includes:

- Training on “civility, inclusive behaviors, cultural competency, taxpayer rights, understanding taxpayer needs, and multi-language access;”<sup>8</sup> and

4 At the end of FY 2020, 81,115 employees were on payroll and 20,767 were eligible to retire or eligible within one year. IRS HCO, Human Capital Analytics and Technology, IRS Workforce Retirement Insight (Oct. 21, 2020).

5 IRS HCO, HCO 2022 (Phase 1) Project Charter (Draft Version 5) (May 24, 2019); IRS response to TAS information request (Oct. 2, 2020).

6 The President's FY 2022 Discretionary Budget Proposal for the IRS provides \$13.2 billion, an increase of \$1.2 billion, or 10.4 percent, above the 2021 enacted level, to administer the nation's tax system fairly, collect \$3.5 trillion in taxes to fund the government, and strengthen tax compliance. See Office of Management and Budget, *The President's Fiscal Year (FY) 2022 Discretionary Budget Proposal* (Apr. 9, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request.pdf>.

7 Taxpayer First Act, Pub. L. No. 116-25, § 2402, 133 Stat. 1014 (2019); IRS, Taxpayer First Act Report to Congress (Jan. 2021).

8 IRS, Taxpayer First Act Report to Congress § 5.01 (Jan. 2021).

- Taxpayer Bill of Rights training for all employees “relying on the Taxpayer Advocate Service as a key partner and primary subject matter expert. Taxpayer Bill of Rights training will be delivered to all IRS Employees beginning in FY2021.”<sup>9</sup>

Although not explicitly addressed in the IRS training strategy, the IRS must have efficient hiring practices for the training strategy to succeed.<sup>10</sup> Accomplishing the culture shift contemplated in the strategy may require hiring new employees with competencies more typical of social workers and providing training in related areas. Additional areas of training content should include data analytics, data mining, and utilization of other technical tools while also emphasizing emerging areas of law or patterns of potential abuses, all with an eye toward an increase in hiring over the next decade to replace retiring employees and increase staffing.

### **Objective 2 for FY 2022 – TAS will collaborate in developing the IRS’s training strategy.**

- Activity 1: Continue to participate in IRS teams that develop and implement the IRS’s training strategy for its workforce of the future.
- Activity 2: Identify obstacles the IRS faces in meeting its training goals and identify practices the IRS can adopt to overcome or minimize obstacles to effective training.
- Activity 3: Work with the IRS to provide recommendations for improved training, levels of training, subject matter training courses, and timing of training, and work with the IRS to determine the effectiveness of its training strategy over the next five years.

## **3. EXPAND THE FUNCTIONALITY OF ONLINE ACCOUNT SERVICES FOR TAXPAYERS AND PRACTITIONERS**

Technology is reshaping how end-users interact with service providers — customers have come to expect secure, convenient access to their personal information and the ability to engage in communications and transactions with financial services providers and governmental agencies. The disruptions in IRS operations due to the COVID-19 pandemic highlighted the need for robust online services, including digital access to notices.

Certainly, the IRS has embarked into the digital self-help realm; the IRS had 9.5 million unique users access its individual Online Account platform in FY 2021 through May 2021, an increase of 113 percent over the same period in FY 2020.<sup>11</sup> The IRS also has other online offerings (*e.g.*, Direct Pay, Electronic Federal Tax Payment System, IRS2Go, Where’s My Refund), but many are standalone systems that do not fully meet the needs of taxpayers and practitioners.

Of the IRS’s many technology needs, the development of robust, secure online accounts is most critical, as they would change how practitioners and taxpayers communicate and work with the IRS. Although the IRS’s individual Online Account platform has basic functionality, TAS’s recommended version of a robust online account for practitioners and taxpayers would allow taxpayers and their authorized representatives full or partial access to the taxpayer’s online account records and include account balance and tax year or account period details; view estimated payments and credits before filing a return; view payment history; view

<sup>9</sup> IRS, Taxpayer First Act Report to Congress § 5.03 (Jan. 2021).

<sup>10</sup> See Systemic Advocacy Objective: *Improve IRS Recruitment, Hiring, and Retention Strategies*, *supra*.

<sup>11</sup> IRS Online Accounts Monthly Account Dashboard (May 2021).

a list and images of tax returns; view a list and images of all notices and correspondence; view and update contact information; view proposed assessments; view a list of authorized representatives (tax professional or a tax professional with a power of attorney) and manage who can access the taxpayer's account; view a list of activities that occurred on the account, such as the last time the taxpayer or his or her authorized representative accessed the account; calculate a balance due for a date in the future; file a nonresident withholding waiver request; protest a proposed assessment; chat with a customer service representative about confidential matters; send a secure message with attachments; and receive an email when the IRS sends a notice or correspondence. Without a substantial improvement to the functionality of its online account offerings, the IRS will be unable to provide first-rate taxpayer service and efficiently carry out its enforcement and collection efforts.

**Objective 3 for FY 2022 – TAS will develop a strategy to gain insights into taxpayer needs that will inform a more robust prioritization plan for digital notice delivery.**

- Activity 1: Work with the IRS on its timeline for when all notices issued by the IRS will be viewable within Online Accounts and Tax Pro Online Accounts.
- Activity 2: Work with the IRS to identify additional functionalities for Online Accounts.
- Activity 3: Review and comment on non-IRS online service offerings available to practitioners and work with the IRS in its development of the Tax Pro Online Account to provide the tools needed to effectively assist taxpayers.
- Activity 4: In collaboration with the IRS, find ways to integrate the various online services into a seamless platform (from the taxpayer/practitioner point of view).

#### **4. EXPAND TECHNOLOGY CAPABILITIES AND ACCESS TO CUSTOMER SERVICE**

The ability to speak to an IRS employee and receive quality service, whether over the phone or in person, is critical to meeting the IRS's mission to provide "top quality service."<sup>12</sup> The IRS received more telephone calls during the 2021 filing season than it had ever received in a full fiscal year; although IRS employees have answered more calls than last year, they have not been able to manage the flood of calls.<sup>13</sup> Through May 22 of the tax year 2020 filing season, the IRS reported a "Level of Service" on its Accounts Management telephone lines of 15 percent with only seven percent of taxpayer calls reaching a telephone assistor.<sup>14</sup> In October 2011, the IRS began offering Virtual Service Delivery (VSD) for in-person service at Taxpayer Assistance Centers (TACs); VSD provides "video conferencing technology to assist taxpayers at IRS partner sites to provide alternative service delivery channels."<sup>15</sup> The IRS also started a Web Service Delivery pilot staffed by a group of TAC assistants that allows taxpayers to attend a virtual appointment from any remote location.<sup>16</sup>

<sup>12</sup> IRS, The Agency, Its Mission and Statutory Authority, <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> (last visited May 26, 2021).

<sup>13</sup> Until this year, the IRS had received its highest number of telephone calls in FY 2008 when it logged about 166.6 million net attempts. As of May 22 (five days after the end of the 2021 filing season) — with more than four months still left in FY 2021 — the IRS had received about 167 million calls. IRS, JOC Snapshot Reports, Enterprise Total (comparing FY ending Sept. 30, 2008, with week ending May 22, 2021).

<sup>14</sup> IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

<sup>15</sup> Internal Revenue Manual (IRM) 21.3.4.2.3, Virtual Services Delivery (VSD) (Oct. 1, 2020). See also IRM 21.3.4.2.3 for types of service available through VSD. See also TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 410-412 (Nov. 13, 2018).

<sup>16</sup> IRS, Wage and Investment (W&I) Division, Business Performance Review Q1 FY 2020, at 10 (Jan. 31, 2020).

While the IRS has made progress, it needs to do more to improve telephone and in-person service. With the much-anticipated start of Advance Child Tax Credit payments in July 2021 and the opening of the associated portals, TAS is concerned about the potential increase in taxpayer calls to the IRS from affected taxpayers searching for advice and answers.

#### **Objective 4 for FY 2022 – TAS will collaborate with the IRS to ensure continued improvement of the IRS’s telephone and in-person service.**

- Activity 1: Review the outcomes of the Security Summit Initiative, a partnership between the IRS, state revenue departments, private sector tax industry leaders, and other government agencies, and work with the IRS to consider potential strategies to manage high demand communications.
- Activity 2: Work with the IRS to determine the full scope of customer service representative work and expand avenues to collect real-time feedback from taxpayers to assist the IRS and strategize how best to meet the needs of taxpayers.
- Activity 3: Work with the IRS in its efforts to expand text chat, callback technology, virtual face-to-face technology, and other technology advancements to allow for scheduled video chats and a more personalized customer service experience, using computers, tablets, or mobile phones.
- Activity 4: Continue to advocate for adequate, sustained multiyear funding for IRS customer service to better meet taxpayers’ needs.
- Activity 5: Continue to advocate that the IRS provide timely and useful information for at least 85 percent of those taxpayers needing phone assistance.

### **5. PROVIDE TAXPAYERS A BETTER UNDERSTANDING OF IRS PROCESSES AND PROCEDURES BY PROMOTING DETAILED AND TIMELY IRS TRANSPARENCY**

The vast majority of taxpayers will receive their refunds in a matter of weeks, or sometimes even days, and never give another thought as to what happened to their return from the time they filed it until the time they received their refund. However, during the 2021 filing season, primarily due to the pandemic, millions of taxpayers had their refunds delayed. Specifically, the IRS had over 35 million returns awaiting a human touch to be processed.<sup>17</sup> The specific reasons for the delays are not always clearly communicated to taxpayers, leaving them to wonder when they will receive their refund, what is causing the delays, and what they can do to expedite the process.

Although there are a number of tools for taxpayers to obtain updates on the status of their refunds (most notably the Where’s My Refund tool and the IRS2Go app), the refund updates provided by these tools, such as “Your return is being processed,” provide taxpayers only limited information without providing an estimated date of the issuance of their refund. IRS written correspondence informing taxpayers of their refund delays or changes made to their tax returns are in some cases unclear and do not provide taxpayers with key information as to why their refund is delayed, what change has been made to their return, or what

<sup>17</sup> Data from IRS systems and W&I as of May 22, 2021, showing 32.6 million returns either waiting to be processed or where processing was suspended and from Customer Account Services. Form 1040-X Consolidated Inventory Report for week ending May 22, 2021, showing 2.7 million unprocessed amended returns for individuals in either IRS Submission Processing or Accounts Management functions. See *Review of the 2021 Filing Season*, *supra*.



they need to do if they disagree.<sup>18</sup> This lack of information often drives taxpayers to call the IRS, but assistors cannot provide them with details as they cannot view the precise reason for the delay on IRS systems.<sup>19</sup>

Taxpayers need clear, concise information from the IRS when preparing their return or dealing with issues that arise after they have filed their return and received their refund, such as examination or collection issues. The IRS posts a vast amount of information on its website and disburses information through multiple social media outlets. Although the IRS's placement and disbursement of information is extensive, it can also be difficult to navigate and the content can be challenging to understand. For example, the IRS posted about 160 frequently asked questions (FAQs) on economic impact payments but did not create a search engine to query these questions, leaving taxpayers to scroll through different categories of questions over several pages to find the answers to a particular issue.<sup>20</sup> In addition, when taxpayers locate an answer to their question in the FAQs, the extent to which they can rely upon the guidance is limited because FAQs do not rise to the level of "published guidance." Therefore, taxpayers cannot rely on FAQs to establish substantial authority to avoid penalties for inaccurate reporting.<sup>21</sup> Thus, taxpayers and practitioners are understandably reluctant to rely upon the FAQs published by the IRS.

To address some of these issues, the IRS needs additional resources to enhance technology and systems, such as taxpayer and practitioner online accounts, while other issues require the IRS to make a greater commitment to transparency, such as improving the quality of the search engine for the IRS website; more timely, informative, and clearer written correspondence; and specificity on the extent to which taxpayers can rely on FAQs.<sup>22</sup>

### **Objective 5 for FY 2022 – TAS will work with the IRS to increase its transparency.**

- Activity 1: Advocate for Congress to appropriate more funding for the IRS to enhance its outdated systems and to modernize its technology, which will ultimately aid in making IRS processes more transparent to taxpayers.
- Activity 2: Work with the IRS to improve written correspondence informing taxpayers of changes such as refund delays and what they can do, if anything, to expedite processing.

18 See National Taxpayer Advocate 2020 Annual Report to Congress 148 (Most Serious Problem: *Refund Delays: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds*); National Taxpayer Advocate 2014 Annual Report to Congress 163 (Most Serious Problem: *Math Error Notices: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayers to Understand and Exercise Their Rights*).

19 Even if the taxpayer can get through on the IRS's phone lines, the IRS may not be able to provide the information the taxpayer needs. In certain circumstances, the reason for the delay has not been input on IRS systems, or in other circumstances, the IRS assistor may not have access to the specific system where the reason for the delay is specified. During the 2021 filing season, about three percent of taxpayer calls reached a telephone assistor of the roughly 85 million taxpayer calls to the IRS's 1040 telephone line, with the IRS reporting an official level of service of six percent of calls answered. ("CSR Level of Service" is an IRS performance measure that reflects the number of calls answered by CSRs divided by the number of calls directed to CSRs (i.e., it excludes primary abandons, taxpayers who encounter busy signals or are disconnected, and calls routed for automated responses)). IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

20 IRS, Economic Impact Payment Information Center, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center> (last visited June 9, 2021). IRS, Questions and Answers about the Second Economic Impact Payment, <https://www.irs.gov/coronavirus/second-eip-faqs> (last visited June 9, 2021). IRS, Questions and Answers About the Third Economic Impact Payment, <https://www.irs.gov/newsroom/questions-and-answers-about-the-third-economic-impact-payment> (last visited June 9, 2021).

21 National Taxpayer Advocate 2021 Fiscal Year Objectives Report to Congress 35 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*). To address this issue, TAS has encouraged the IRS to publicly state that it will abide by its own FAQs. See also IRS, Understanding IRS Guidance – A Brief Primer, <https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer> (last visited June 16, 2021).

22 See Systemic Advocacy Objective: *Expand the Functionality of Online Account Services for Taxpayers and Practitioners*, *supra*.



- Activity 3: Advocate that the IRS specify the extent to which taxpayers can rely on FAQs, number and provide effective dates for all FAQs, and not delete previously issued guidance from its website even if its position has changed.

## 6. IMPROVE TAXPAYER ACCESS TO DIGITAL COMMUNICATION OPTIONS AND PERMIT DIGITAL SIGNATURES

Last year's closure of the telephone call centers and TACs and the challenges resulting therefrom exposed critical shortcomings in IRS service and communication channels. The pandemic highlighted the necessity for the IRS to increase the availability and use of digital communications, including the electronic exchange of correspondence and documents in a secure environment for critical services while still providing telephone service for taxpayers who are unable or choose to call rather than use technology. The IRS is working to improve access as mandated by the Taxpayer First Act, and it outlined its vision for improved digital communication options in its Taxpayer First Act Report to Congress.<sup>23</sup> On a positive note, the IRS anticipates implementing Secure Access Digital Identification (SADI) in conjunction with its Child Tax Credit Upload Portal and then implementing it for other systems beginning FY 2022. SADI is anticipated to modernize the e-authentication platform and improve online access for all taxpayers.

To improve its customer service, the IRS must continue moving forward its efforts to expand and make permanent options to digitally transmit and sign documents, reduce authentication barriers for many digital applications, use email or other similar communication tools in a secure environment, provide digital communication options for all taxpayers (individuals and businesses), provide mobile-ready digital options, and continue virtual face-to-face service options.

During the pandemic, social distancing measures separated practitioners from clients, which led the IRS to allow the use of digital signatures. Most recently, the IRS has extended through December 31, 2021, the option for taxpayers and representatives to use electronic or digital signatures when signing more than 40 forms that currently require a handwritten signature.<sup>24</sup> The National Taxpayer Advocate continues to recommend the IRS make permanent all temporary changes to electronic or digital signature requirements implemented in response to the pandemic.<sup>25</sup> In response to the National Taxpayer Advocate's recommendation, the IRS agreed only in part, stating "[n]ot all temporary changes may be made permanent due to National Institute for Standards & Technology (NIST) requirements." However, the IRS will continue to work toward "identifying permanent signature solutions that allow for electronic submission of forms and digital transactions in a secure manner that meets NIST requirements."<sup>26</sup> The National Taxpayer Advocate encourages the IRS to quickly identify viable signature solutions and implement them expeditiously.

<sup>23</sup> Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019). Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021).

<sup>24</sup> See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue#digitalsignature> (last visited June 10, 2021).

<sup>25</sup> National Taxpayer Advocate 2020 Annual Report to Congress 71 (Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*).

<sup>26</sup> NIST, NIST Special Publication 800-63-3, *Digital Identity Guidelines* (June 2017), <https://doi.org/10.6028/NIST.SP.800-63-3> (Revision 3 includes updates as of March 2, 2020).

### **Objective 6 for FY 2022 – TAS will advocate for an expanded range of improved options for accessing IRS services and information using digital communications.**

- Activity 1: Continue to advocate that the IRS maintain a robust omnichannel service environment while concurrently enhancing its digital offerings.
- Activity 2: Continue to advocate that the IRS accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
- Activity 3: Continue to advocate for the permanent use of a secure messaging system with taxpayers and their representatives.
- Activity 4: Continue to advocate for an expanded list of documents the IRS will accept and transmit by email using an established secure messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
- Activity 5: Continue to work with the IRS on implementation of the above recommendation and ensure taxpayer rights are protected by the technology changes.

## **7. MITIGATE THE IMPACT OF THE 2021 FILING SEASON CHALLENGES AND REFUND DELAYS**

While the IRS continued to handle challenges associated with the COVID-19 pandemic (including programming changes to comply with legislation), the IRS delivered a historically-low level of taxpayer service on its toll-free telephone lines during the tax year 2020 filing season, the due date for which was postponed to May 17, 2021.<sup>27</sup> Although the IRS processed nearly 137 million individual and business income tax returns this filing season,<sup>28</sup> the processing of millions of taxpayer returns,<sup>29</sup> including those claiming refunds, were delayed. During 2021, the IRS has struggled to work through over 35 million tax returns requiring manual processing,<sup>30</sup> including several million paper tax returns filed in 2020.<sup>31</sup> Because the vast majority of tax returns seek refunds, such delays in processing are not a mere inconvenience — they pose a direct impact on taxpayers' wallets. Despite the IRS's best efforts, taxpayers did not receive the help or information they needed regarding delayed refunds this filing season.

### **Objective 7 for FY 2022 – TAS will identify and propose recommendations to mitigate future filing season delays and improve taxpayer service.**

- Activity 1: Continue to urge Congress to ensure the IRS has sufficient funding, staffing, and technology to provide a high level of service to taxpayers while protecting their rights.
- Activity 2: Continue working with the IRS on TAS's recommendation for a robust online account for individuals and practitioners, which would reduce the strain on IRS resources.

<sup>27</sup> IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

<sup>28</sup> IRS, Filing Season Statistics for Week Ending May 21, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-21-2021>; Submission Processing Program Management and Process Assurance Branch Filing Season Statistics Report (May 21, 2021) for Business Income Tax returns (Form 1065 and 1120 series).

<sup>29</sup> Data from IRS systems and W&I as of May 22, 2021, showing 32.6 million returns either waiting to be processed or where processing was suspended. In addition, data from the Customer Account Services. Form 1040X Consolidated Inventory Report for the week ending May 22, 2021, showed approximately 2.7 million amended returns of individuals awaiting processing by the Submission Processing or Accounts Management functions.

<sup>30</sup> *Id.*

<sup>31</sup> Data from IRS systems and W&I as of April 16, 2021, showing 4.2 million returns received in 2020 waiting to be processed.

## 8. MINIMIZE REFUND DELAYS FOR TAXPAYERS WHOSE LEGITIMATE RETURNS ARE DELAYED BY IRS FRAUD FILTERS

The IRS issues most refunds promptly, but its pre-refund fraud filters delay millions of legitimate refund claims. In 2020, these filters flagged over two million returns for identity theft (IDT) verification and 3.3 million for verification of income and withholding for potential fraud.<sup>32</sup> The IRS's automated (systemic) checks are quick — two days on average for IDT filter selections after the taxpayer authenticates his or her identity and five days on average for automated fraud filter selections in calendar year 2020.<sup>33</sup> The flagged non-automated fraud filters are delayed longer — 39 days on average for certain manual filters used by the IRS because they require manual reviews — and some of these reviews take much longer, in part, because they require third-party contacts.<sup>34</sup> For returns flagged by the non-automated fraud filters for income and withholding verification through September 2020, refunds took more than 56 days for about 25 percent, and for those flagged for identity verification, 120 days for 18 percent.<sup>35</sup>

When the IRS cannot validate income and withholding reported on a tax return using third-party contacts or data, it forwards the return to a compliance treatment stream for further evaluation. Some returns get stuck in transit, as we reported in last year's Annual Report to Congress.<sup>36</sup> Approximately 20,000 of the 2018 tax returns filed in 2019 remain unresolved and in transit to a compliance treatment as of May 17, 2021, which is an unacceptable delay.<sup>37</sup>

The National Taxpayer Advocate recognizes that IDT and fraud screens are necessary to prevent the issuance of fraudulent refunds. However, many taxpayers whose legitimate refunds are delayed have trouble getting specific and timely information regarding the delay. As noted, the Where's My Refund tool on the IRS website and the IRS2go app do not provide specific information as to the reasons for a refund delay. When taxpayers try to verify their identity through the ID Verify online tool, many cannot pass the IRS Secure Access authentication requirements.<sup>38</sup> The IRS should enhance the accessibility of these tools and the information they provide to increase transparency to taxpayers whose refunds are delayed.

### Objective 8 for FY 2022 – TAS will continue to work with the IRS to minimize refund delays for taxpayers whose legitimate tax returns are delayed by IRS fraud filters.

- Activity 1: Continue to work with the IRS to improve IRS correspondence notices and letters for clarity, including information posted on IRS.gov Understanding Your Notice pages. TAS will continue to advocate for enhancements to IRS tools, such as Where's My Refund and IRS2go, to include the reasons for the refund delay, any documents or information the taxpayer may need to provide for the IRS to process the claim for refund, and reasonable estimates of when taxpayers can expect to receive their refund.

32 IRS, IDT and Integrity and Verification Operation (IVO) Performance Report (Dec. 31, 2020).

33 IRS response to TAS information request (Oct. 23, 2020).

34 IRS, Return Review Program (RRP) Non-IDT Performance Report 3 (Oct. 7, 2020).

35 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020); IDT and IVO Performance Report 6 (Oct. 7, 2020).

36 See National Taxpayer Advocate 2020 Annual Report to Congress 148-161 (Most Serious Problem: *Refund Delays: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds*). As of September 24, 2020, approximately 30,000 returns remained unresolved and were still in transit to a compliance treatment function.

37 IRS, Compliance Data Warehouse (CDW) Individual Master File (IMF) Transaction History and IMF Status History files as of May 17, 2021.

38 IRM 21.2.1.58, Secure Access eAuthentication (Apr. 13, 2020).

- Activity 2: Continue involvement on IRS cross-functional teams including advocating for an improved e-authentication method for taxpayers selected by IDT filters.
- Activity 3: Continue to advocate for the widespread use of the digital document upload portal or other technology that will allow taxpayers to securely submit identity and income verification documents electronically.
- Activity 4: Continue reviewing our local TAS cases and external submissions in the Systemic Advocacy Management System (SAMS) to identify potential programming errors or taxpayer burden deficiencies with IRS fraud filters or the processing and release of refunds for those associated taxpayers.

## 9. EXPAND ELECTRONIC FILING CAPABILITIES

The IRS received approximately 17 million paper Form 1040 returns and 22.3 million business returns, including over 1.6 million business income tax returns during calendar year 2020 that required manual transcription.<sup>39</sup> It could not timely process millions due to the work constraints created by the pandemic,<sup>40</sup> illustrating the need for expanded electronic filing and automated processing of tax returns. The tax return processing delays have persisted into 2021, with 6.1 million individual tax returns, 5.6 million business tax returns, and 5.1 million unspecified returns still waiting to be processed at the end of the filing season.<sup>41</sup> These extended delays and the burdens on taxpayers who rely on their timely processing demand a fundamental change in IRS standards for the forms and schedules it will process electronically and through automation. Namely, the IRS should make a greater array of forms eligible for electronic filing to allow more taxpayers the ability to use the e-file option.

The National Taxpayer Advocate recommended that the IRS reevaluate the Modernized e-File system to allow for e-filing of all forms, schedules, and attachments,<sup>42</sup> to which the IRS agreed to do a feasibility study by October 31, 2021.<sup>43</sup> We look forward to working with the IRS to determine next steps toward making more forms available for electronic filing and fast tracking the development and implementation of additional digital forms.

### Objective 9 for FY 2022 – TAS will work with the IRS to identify enhanced e-filing and digital signature options.

- Activity 1: Advocate for the prioritization of the e-filing of forms, schedules, and attachments identified by the IRS study.
- Activity 2: Advocate for the expeditious implementation of new digital forms.
- Activity 3: Work with the IRS to implement scanning technology to reduce transcription errors on individual income tax returns prepared electronically but filed on paper.

39 IRS, Filing Season Statistics for Week Ending December 11, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-11-2020>; for business tax returns, see Submission Processing Program Management and Process Assurance Branch Filing Season Statistics Report (Dec. 26, 2020).

40 Data from IRS systems and W&I as of April 16, 2021, showing 14.7 million paper returns waiting to be processed, including 4.2 million returns received in 2020. See also TIGTA, Ref. No. 2021-40-038, *Interim Results of the 2021 Filing Season 2* (May 6, 2021).

41 Data from IRS systems and W&I as of May 21, 2021.

42 National Taxpayer Advocate 2020 Annual Report to Congress 75-83, at 83 (Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*). The National Taxpayer Advocate identified more than 40 active forms for which the IRS provided no e-filing opportunity.

43 IRS, IRS Response to the National Taxpayer Advocate 2020 Annual Report to Congress 20 (Mar. 16, 2021).

## 10. PROVIDE ADMINISTRATIVE APPEAL RIGHTS TO TAXPAYERS REQUESTING ABATEMENT AND INCLUDE ADDITIONAL STATUS INFORMATION ON THE WHERE'S MY AMENDED RETURN TOOL

Taxpayers file an amended return to request a refund of tax they paid.<sup>44</sup> If the IRS denies a taxpayer's refund claim, the taxpayer may seek review by the Independent Office of Appeals and if necessary, bring a refund suit in district court or in the Court of Federal Claims. A taxpayer can also file an amended return to reduce an assessed tax that remains unpaid, *i.e.*, a request for abatement.<sup>45</sup> However, there is no administrative review available when the IRS denies a request for abatement. In her 2020 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS issue a 30-day letter giving taxpayers whose claims for abatement the IRS denies the right to file a protest with the Independent Office of Appeals. The IRS did not agree to this recommendation.<sup>46</sup> The National Taxpayer Advocate continues to assert that taxpayers who request an abatement of tax should not be required to first pay the tax and then seek a refund before having access to an administrative appeal.

Since 2013, the IRS has provided taxpayers with the Where's My Amended Return tool.<sup>47</sup> The tool allows taxpayers to receive minimal information on the status of their amended return such as whether the IRS has received the amended return, whether it has made adjustments, and whether it has completed processing. The National Taxpayer Advocate has recommended updates to the tool to include identifying when the IRS has selected an amended return for an audit, when it assigns an auditor, and the estimated completion date of the audit process.<sup>48</sup> The IRS indicated that expanding the Where's My Amended Return tool beyond its original use may provide inaccurate and/or confusing information to taxpayers, as it may not audit all amended returns selected (or referred) for examination.<sup>49</sup> The National Taxpayer Advocate continues to encourage the IRS to provide relevant information about the status of amended returns with sufficient clarity so taxpayers are not confused. For example, the IRS could inform taxpayers that it has *selected* an amended return for audit and that it may or may not *actually* audit the return, and provide a timeframe within which the IRS usually decides whether it will actually audit a return selected for audit.

### Objective 10 for FY 2022 – TAS will continue to advocate for allowing taxpayers requesting an abatement the opportunity for administrative review with the Independent Office of Appeals, issuance of a 30-day letter, and improved online tools.

- Activity 1: Continue to advocate for an appeal process for denied requests for abatement and if appropriate, issuance of revised IRM procedures, and make recommendations as appropriate.
- Activity 2: Continue to advocate for changes and updates to online tools such as Where's My Amended Return to give taxpayers necessary information about the status of their amended returns.

44 See National Taxpayer Advocate 2020 Annual Report to Congress 134 (Most Serious Problem: *Amended Returns: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year*).

45 IRC § 6404(a) authorizes the IRS to abate the unpaid portion of the assessment of any tax which "is excessive in amount" meaning "in excess of the correct tax liability." Treas. Reg. § 301.6404-1(a).

46 See Appendix 1: *IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2020 Annual Report to Congress*, *infra*.

47 IRM 21.2.1.59, Where's My Amended Return (WMAR) (Mar. 30, 2016).

48 See National Taxpayer Advocate 2020 Annual Report to Congress 141 (Most Serious Problem: *Amended Returns: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year*).

49 See Appendix 1: *IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2020 Annual Report to Congress*, *infra*.

- Activity 3: Collaborate with the IRS on reviewing current language for improvements to information provided to taxpayers via online tools.

## 11. ANALYZE MATH ERRORS ATTRIBUTABLE TO THE 2020 RECOVERY REBATE CREDIT/ECONOMIC IMPACT PAYMENTS TO ELIMINATE FUTURE RECOVERY REBATE CREDIT ERRORS

Taxpayers who did not receive their advance recovery rebate credit (first Economic Impact Payment (EIP) during 2020 or second EIP in January 2021) are eligible to claim the Recovery Rebate Credit (RRC) on their 2020 income tax returns. As of May 21, 2021,<sup>50</sup> the IRS determined that over five million returns had potential RRC errors, including dependents listed on multiple returns, missing or invalid Social Security numbers or Individual Taxpayer Identification Numbers, missing military indicators, individuals who were deceased prior to the tax period, dependents who exceeded the age limitation, or an incorrectly computed RRC amount, resulting in the issuance of math error notices.<sup>51</sup>

Some of the barriers causing taxpayers inaccuracies or confusion involved navigation of the RRC worksheet, issues with tracing missing payments prior to taxpayers filing their returns, and a lack of understanding of the different legislative standards for dependents between the three rounds of EIPs. And, even if taxpayers reached out to the Customer Service Accounts Management toll-free lines, it was unlikely that calling the IRS for assistance would have yielded additional information during the tax year 2020 filing season because through May 22, 2021, the IRS reported a Level of Service (LOS) on its Accounts Management telephone lines of 15 percent.<sup>52</sup> Only seven percent of taxpayer calls reached a telephone assistor.

The statute requires taxpayers to respond within 60 days of the math error notice.<sup>53</sup> This filing season, taxpayers faced an additional challenge in reaching the Customer Service Accounts Management Toll-Free lines after receiving a math error notice. Many taxpayers may not be able to speak with an IRS employee before the 60-day period expires. With the large influx of calls and the dismal 20 percent LOS during the filing season for the math error phone lines,<sup>54</sup> IRS employees will have difficulty addressing all inquiries within the 60-day timeframe established to protect taxpayers' *right to challenge the IRS's position and be heard*.<sup>55</sup>

### Objective 11 for FY 2022 – TAS will work with the IRS with the goal of preventing RRC math errors in the next filing season.

- Activity 1: Educate taxpayers on how to compute the credit correctly to prevent errors and delays in processing their 2021 return for an EIP 3 not received in 2021 and claimed as RRC.

50 IRS Math Error Report (May 21, 2021), considering Taxpayer Notice Codes 681, 682, 683 occurring through May 21, 2021. See also Erin M. Collins, Lifecycle of a Tax Return, NATIONAL TAXPAYER ADVOCATE BLOG (May 18, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-lifecycle-of-a-tax-return/>.

51 IRM 21.6.3.4.2.14.2, RRC Taxpayer Notice Codes (TPNC) (May 23, 2021) (currently available only on Servicewide Electronic Research Program).

52 JOC Snapshot Reports: Accounts Management Snapshot (week ending May 22, 2021).

53 IRC § 6213(b)(2).

54 JOC Snapshot Reports: Accounts Management Snapshot (week ending May 22, 2021). For the filing season, the LOS for the W&I IMF Customer Response Line average of 19.6 percent and the LOS for the Self-Employed IMF Customer Response Line averaged 20.7 percent.

55 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>. The rights contained in TBOR are also codified in the IRC. See IRC § 7803(a)(3).



- Activity 2: Review the RRC Worksheet in the tax year 2021 Form 1040 Instructions and work with the IRS to determine if clarifications in computing the RRC are needed, and if so, recommend updating the form before the next filing season.
- Activity 3: Conduct research to identify the most common math errors for the RRC and work with the IRS to educate taxpayers including the use of FAQs on IRS.gov and the tax year 2021 Form 1040 instructions.
- Activity 4: Analyze RRC math errors and related programming to determine if there were any procedural defects for RRC processing and if so, propose corrections.
- Activity 5: If appropriate, submit recommendations for IRM updates through the normal reviews and the Out of Clearance Process.

## 12. MONITOR THE IRS'S RECOVERY FOR THE UNEMPLOYMENT COMPENSATION EXCLUSION

On March 11, 2021, Congress enacted the American Rescue Plan Act (ARPA) of 2021. Section 9042 of ARPA created a partial exclusion to the taxation of unemployment benefits, providing that the first \$10,200 of these benefits received in 2020 are exempt from taxation (\$20,400 for married couples filing joint returns) with modified adjusted gross income (AGI) below \$150,000.

The IRS and tax preparation software companies updated their forms, instructions, and guidance for unemployment compensation recipients for returns not yet filed. However, by the time this legislation was signed into law, an estimated 43 percent of all tax year 2020 individual income tax returns had been filed with the IRS.<sup>56</sup> The IRS reprogrammed its systems to automatically reduce a taxpayer's income up to \$10,200 for each taxpayer who received unemployment compensation and included it in income (up to \$20,400 for married couples filing joint returns). On March 31, the IRS announced that it will automatically recompute any deficiencies or refunds for these early filer taxpayers.<sup>57</sup> It began making those computations after the close of the 2021 filing season, and the first batch of payments began in late May and will continue through the summer. These credit adjustments eliminated the need for millions of taxpayers to file amended returns. However, the IRS did not calculate all other federal credits or deductions not claimed on the original tax return for taxpayers with qualifying children who might now be eligible for those credits. These taxpayers will need to file amended returns if they did not originally claim the Earned Income Tax Credit with qualifying children or other federal credits but now are eligible because the exclusion reduced their AGI.

### **Objective 12 for FY 2022 – TAS will continue working with the IRS in FY 2021 on the implementation of the unemployment compensation recovery process and ensure the recovery is complete into FY 2022.**

- Activity 1: Continue to monitor the systemic recovery process for programming or procedural defects on any return identified or processed after October 1, 2021.

<sup>56</sup> As of March 12, 2021, the IRS had received about 66.1 million returns. IRS, Filing Season Statistics for Week Ending March 12, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-march-12-2021> (last visited May 27, 2021). The three-year average of the number of federal individual income tax returns filed for tax years 2017, 2018, and 2019 (less returns filed solely for the purpose of receiving economic incentive payments) is 153.1 million. IRS CDW Individual Returns Transaction File (Apr. 29, 2021).

<sup>57</sup> IRS, IR-2021-71, IRS to Recalculate Taxes on Unemployment Benefits; Refunds to Start in May, (Mar. 31, 2021), <https://www.irs.gov/newsroom/irs-to-recalculate-taxes-on-unemployment-benefits-refunds-to-start-in-may>.



- Activity 2: Advocate for continued education for taxpayers who have filed or need to file an amended return for additional credits, deductions, or income not reported on the original return and continue to review and monitor procedures and processing of those amended returns.
- Activity 3: Monitor the downstream effects on other IRS programs related to the unemployment compensation exclusion, such as the Automated Underreporter Program and Exam.

### 13. ASSIST TAXPAYERS WHO EXPERIENCE CHANGES RELATING TO THE CHILD TAX CREDIT DURING 2021

ARPA makes several temporary changes (for tax year 2021 only) that expand the Child Tax Credit (CTC), primarily for low-income taxpayers, such as expanding eligibility to 17-year-olds; eliminating the Advance CTC phase-in based on earned income; and increasing the credit for low- and moderate-income taxpayers, with larger increases for younger children to \$3,600 per child for a young child (0-5 years old at the end of 2021) and \$3,000 per child for an older child (6-17 years old at the end of 2021). These changes will increase the amount of the credit for low- and moderate-income taxpayers, while higher-income families will generally receive the same benefit as under prior law (unless they have an eligible 17-year-old). The changes also mandate that the IRS issue advance payments to qualifying families starting as early as July 2021 (although families may unenroll). ARPA directs the Treasury to issue half of the expected 2021 credit in periodic payments beginning after July 1, 2021. The amount of the payments advanced in 2021 are estimated based on 2020 income tax data, or if unavailable, 2019 income tax data. Eligible families who do not normally file a tax return can register on the Non-Filer Sign-Up tool in 2021.<sup>58</sup>

The IRS determines the qualification and the amount of the CTC using taxpayers' filed tax returns. However, many taxpayers experienced life events such as a change to marital status or family composition in 2021 that is not reflected on a filed return. Taxpayers may have divorced or separated, experienced the birth of a child, changed bank account numbers, or have a court-recognized agreement to alternate years for claiming dependents on their returns.

To address these life events, the IRS has designed and developed a Child Tax Credit Update Portal, which is anticipated to allow taxpayers the ability to opt out of receiving advance payments and to make life event updates through the portal impacting either their eligibility or amount of the CTC, and will provide the ability to change their address or change their bank information. This online portal, anticipated by July 1, 2021, will allow taxpayers to interact with the IRS and make these updates to their information.<sup>59</sup>

TAS is a member of the IRS working group tasked with launching the online portal. The group is also drafting necessary guidance, anticipating required policy changes, and addressing information technology concerns to ensure appropriate levels of authentication to safeguard against fraud.

<sup>58</sup> ARPA, Pub. L. No. 117-2, 135 Stat. 4 (2021).

<sup>59</sup> *The 2021 Filing Season and 21st Century IRS: Hearing Before the United States Senate Committee on Finance*, 117th Cong. (Apr. 13, 2021) (statement of Charles P. Rettig, Commissioner of Internal Revenue).

### Objective 13 for FY 2022 – TAS will ensure the Child Tax Credit Update Portal and periodic payments are accurate and timely.

- Activity 1: Participate on Servicewide teams to identify, monitor, and evaluate any issues arising with the CTC Update Portal, the Non-Filers Sign-Up tool, or periodic payments.
- Activity 2: Assist the IRS with development of IRM updates, correspondence products, self-help guidance, and other materials to reflect the legislative mandates and procedures.
- Activity 3: Work with the IRS to develop targeted outreach to taxpayers and tax professionals to provide education about the options and benefits of the CTC Update Portal and the Non-Filers Sign-Up tool.

## 14. IMPROVE CORRESPONDENCE AUDIT COMMUNICATIONS AND FOCUS ON HIGH DEFAULT RATES FOR TAXPAYERS WITH ADJUSTED GROSS INCOMES BELOW \$50,000

Correspondence audits represent more than 70 percent of the audits the IRS conducts and are one of the most significant tools the IRS uses to achieve voluntary compliance.<sup>60</sup> However, they have the lowest “no change” rate, the lowest agreed rate, the lowest appeal rate, and the highest non-response and default rates of all audits.<sup>61</sup> These disparities worsen when the audited taxpayer is low-income or when there are other barriers that hinder communication during the audit, such as undeliverable mail. Although a correspondence audit is mail-based, some taxpayers may need to contact the IRS via a toll-free number, which the IRS places on each audit notice. It considers this as the most efficient method to address correspondence inquiries and to meet the requirements of the IRS Restructuring and Reform Act of 1998.<sup>62</sup> But the IRS’s correspondence audit toll-free lines are staffed insufficiently to adequately support the quantity of audits conducted.

Correspondence audits have higher default rates and non-response rates and result in more “audit reconsiderations” and lower agreement rates.<sup>63</sup> Moreover, individual taxpayers with total positive income below \$50,000 are much more likely to be examined by correspondence audit when compared to taxpayers with higher incomes.<sup>64</sup> The IRS should utilize the implementation of its new telephone callback technology, email, or Taxpayer Digital Communications (TDC) technology to enhance its ability to provide taxpayers a single point of contact for correspondence audit assistance. Providing responsive taxpayers with the contact information of the assigned examiner will improve the customer experience and efficiency.

The high volume of correspondence audits combined with limited communication alternatives, insufficient levels of service, and the inability to contact a knowledgeable and accountable IRS employee often cause

60 See National Taxpayer Advocate 2020 Annual Report to Congress 102-118 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*).

61 *Id.*

62 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 48-50 (*IRS Responses and National Taxpayer Advocate’s Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*). See IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3705(a), 112 Stat. 685, 777 (1998).

63 See National Taxpayer Advocate 2020 Annual Report to Congress 102-118 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*).

64 National Taxpayer Advocate 2020 Annual Report to Congress, at xiv (*Taxpayer Rights and Service Assessment: IRS Performance Measures and Data Relating to Taxpayer Rights and Service*).

unnecessary taxpayer burden and hinder several taxpayer rights, including the *right to quality service*.<sup>65</sup> The IRS needs to reconsider its current approach to the correspondence audit process.

**Objective 14 for FY 2022 – TAS will strategize with the IRS to connect and better communicate with taxpayers involved in the correspondence audit process.**

- Activity 1: Continue to advocate for providing taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee's secure email address or the TDC Secure Messaging access needed to send and receive documents and communicate electronically with the assigned examiner.
- Activity 2: Continue to advocate for use of email or similar technology such as TDC Secure Messaging capabilities for all correspondence audit programs.
- Activity 3: Conduct research to identify the factors triggering the high rate of defaults in correspondence audits.
- Activity 4: Review and analyze current IRS procedures to determine if they add to the high rate of defaults.
- Activity 5: Examine the downstream consequences of the high rate of defaults on audit reconsideration, Tax Court petitions, and collections.
- Activity 6: Work with the IRS to develop a strategy to identify potential non-responsive taxpayers early in the audit process and propose recommendations to decrease defaults based upon our research.

## **15. IDENTIFY POTENTIAL COLLECTION BARRIERS FOR LOW-INCOME TAXPAYERS**

The National Taxpayer Advocate has advocated that taxpayers who owe a tax debt should be responsible for that debt but not at the expense of suffering economic hardship.<sup>66</sup> To its credit, the IRS has taken steps to alleviate the burden on taxpayers struggling to balance paying their basic living expenses with their tax debt. But a low-income taxpayer may experience obstacles in navigating collection issues with the IRS. TAS will continue to work with the IRS to identify potential collection barriers and recommend solutions for low-income taxpayers with outstanding tax debts facing an economic hardship.

**Objective 15 for FY 2022 – TAS will work with the IRS to identify any areas needing improvement in collection practices and communication, specifically for low-income taxpayers.**

- Activity 1: Continue to work with the IRS to permit low-income taxpayers experiencing an economic hardship to request a bypass of a refund offset on a pending offer in compromise (OIC) and pursue the termination of the refund recoupment requirement in the year of the OIC acceptance.

<sup>65</sup> See TBOR, <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>. The rights contained in TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>66</sup> For an example of TAS advocacy related to collection practices and low-income taxpayers, see National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

- Activity 2: If appropriate, work with the IRS on updating its internal guidance and communications to taxpayers for any agreed changes to its collection procedures or policies.
- Activity 3: Continue to work with the IRS to improve communication with low-income taxpayers to help them avoid unexpected economic hardship when they request waivers of installment agreement user fees and to identify sources of delays with user fee waiver requests.

## 16. CONTINUE ADVOCACY EFFORTS TO CORRECT ERRONEOUS COLLECTION STATUTE EXPIRATION DATES DUE TO PENDING INSTALLMENT AGREEMENTS

In general, the IRS can collect a tax debt ten years from the date of assessment, which is referred to as the Collection Statute Expiration Date (CSED).<sup>67</sup> The IRS can suspend the CSED during certain events, *e.g.*, while a request for an installment agreement (IA) is pending, resulting in an extension of the tax debt collection period.<sup>68</sup> The problem TAS identified centers around a computer glitch that tolled the CSED for an improper amount of time after the suspension should have been lifted. Unfortunately, many taxpayers or representatives are unaware of the suspension and impact to the general ten-year CSED.<sup>69</sup>

In 2017, TAS identified a population of taxpayer accounts with unreversed or improperly reversed pending IAs that led to incorrect CSED calculations and erroneously added time to the tax debt collection period. TAS also found inconsistent IRS procedures related to CSED guidance.<sup>70</sup> The IRS agreed to correct taxpayer accounts with erroneous CSEDs and the underlying problems that led to the miscalculations.

In July 2020, TAS identified and provided the IRS with over 6,000 taxpayer accounts with CSEDs erroneously extended by one year or more.<sup>71</sup> As of December 2020, the IRS had not finished reviewing and correcting these cases.<sup>72</sup> TAS has recently provided the IRS with several thousand more taxpayer accounts that appear to have the CSED incorrectly extended by a year or more.<sup>73</sup> Despite efforts to find and correct unreversed and improperly reversed pending IAs, TAS continues to find errors, resulting in incorrect CSED extensions of a year or more.

### Objective 16 for FY 2022 – TAS will continue to work with the IRS to resolve the issues contributing to erroneous CSEDs resulting from unreversed pending IAs.

- Activity 1: Raise awareness of CSEDs in external outreach and in TAS training.

<sup>67</sup> IRC § 6502.

<sup>68</sup> The CSED is suspended while a request for an IA is pending, or 30 days after an IA is terminated or rejected, and if appealed, during any appeal of that decision. IRC § 6331(i)(5), (k)(2), (k)(3); Treas. Reg. § 301.6159-1(g). IRC § 6502(a)(2)(A) allows for an extension of the CSED when there is an IA in place and the taxpayer and the IRS agree to the extension. Other events that suspend the CSED are OICs, bankruptcy, innocent spouse, collection due process, combat zone, and waiver to extend the CSED.

<sup>69</sup> Nina E. Olson, As a Result of TAS Advocacy, the IRS Is Working to Address a Computer Glitch That Allowed Collection Activity on Accounts With Expired Collection Statute Expiration Dates But Many Issues Remain Unresolved, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 7, 2018), <https://www.taxpayeradvocate.irs.gov/news/ntablog-as-a-result-of-tas-advocacy-the-irs-is-working-to-address-a-computer-glitch-that-allowed-collection-activity-on-accounts-with-expired-collection-statute-expiration-dates-but-many-issues-remain/>.

<sup>70</sup> In FYs 2018 to 2021, TAS submitted 57 IRM updates. The IRS accepted 32 (data on file with TAS).

<sup>71</sup> TAS email communication to the IRS (July 9, 2020).

<sup>72</sup> Email communication from the IRS (Dec. 14, 2020).

<sup>73</sup> TAS email communication to the IRS (Apr. 9, 2021).

- Activity 2: Collaborate with the IRS to include CSED training in Continuing Professional Education courses for collection employees.
- Activity 3: Recommend that the IRS insert CSED information in publications, notices, and forms, specifically Form 9465, Installment Agreement Request.
- Activity 4: Monitor the implementation of the Integrated Automation Technology CSED Calculator Tool.<sup>74</sup>
- Activity 5: Monitor proposed program changes through Unified Work Requests (UWRs) to prevent erroneous CSEDs.<sup>75</sup>
- Activity 6: Monitor cases with incorrect CSEDs to make sure the IRS has corrected them.
- Activity 7: Monitor cases containing erroneous CSEDs with payments that are not barred by the refund statute to make certain the payments are returned to taxpayers.

## 17. INCREASE TAXPAYER PARTICIPATION IN THE OFFER IN COMPROMISE PROGRAM

The IRS received 44,809 OICs in FY 2020, its lowest total receipts since 2008.<sup>76</sup> While it is unclear what impact the COVID-19 pandemic may have had on OIC receipts, FY 2020 marked the seventh consecutive year of decline.<sup>77</sup> There is currently no method available for the IRS to identify and measure factors that may drive OIC receipts.

During the same seven-year period, the IRS inventory of currently not collectible (CNC) accounts rose from \$82.8 billion to \$145.8 billion.<sup>78</sup> When the IRS puts accounts into CNC status, it removes the accounts from active inventory and suspends collection actions.<sup>79</sup> Many of these accounts become inactive tax receivables and are required to be assigned for collection to private collection agencies (PCAs).<sup>80</sup> PCAs do not secure financial information from the taxpayer or secure and investigate collection alternatives such as OICs.<sup>81</sup> Therefore, taxpayers who may have been eligible for OICs are not informed of collection alternatives the IRS may offer based on their current financial situation.

### Objective 17 for FY 2022 – TAS will work with the IRS to determine if it can develop a more targeted approach to reach taxpayers for whom OICs may be a viable option.

- Activity 1: Review prior test programs the IRS has used in attempts to increase OIC receipts.
- Activity 2: Conduct research to identify taxpayer segments who are prime candidates for OICs.

<sup>74</sup> The tool was developed and sponsored by TAS and adopted by W&I in December 2019 but was paused in FY 2020 due to the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the COVID-19 pandemic. Implementation of the tool is expected in FY 2022.

<sup>75</sup> Under consideration by the Small Business/Self-Employed Division, Collection Policy, Case Resolution Alternatives are four TAS proposals for UWRs.

<sup>76</sup> IRS, Collection Activity Report (CAR) 5000-108, Monthly Report of Offer in Compromise Activity (Sept. 28, 2020, and Sept. 29, 2008).

<sup>77</sup> IRS, CAR 5000-108, Monthly Report of Offer in Compromise Activity (Sept. 29, 2008; Oct. 6, 2009; Oct. 4, 2010; Oct. 3, 2011; Oct. 3, 2012; Sep. 30, 2013; Sept. 29, 2014; Oct. 5, 2015; Oct. 3, 2016; Oct. 2, 2017; Oct. 1, 2018; Sept. 30, 2019; and Sept. 28, 2020).

<sup>78</sup> IRS, CAR 5000-149, Monthly Recap of Accounts Currently Not Collectible Report (Sept. 28, 2013 and Sept. 26, 2020).

<sup>79</sup> IRM 1.2.1.6.14, Policy Statement 5-71, Reporting Accounts Receivable as Currently Not Collectible – General (Nov. 19, 1980); IRM 5.16.1.1.1, Background (Sept. 18, 2018).

<sup>80</sup> IRC § 6306(c). See also IRM 5.19.1.5.21.1, Private Debt Collection Overview (Sept. 9, 2019).

<sup>81</sup> IRS, Private Debt Collection Frequently Asked Questions, <https://www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection-faqs-0> (last visited Apr. 28, 2021).

- Activity 3: Work with the IRS to develop targeted outreach to identified taxpayers.
- Activity 4: Establish a method to monitor and measure any targeted outreach endeavors.

## 18. MITIGATE THE UNINTENDED EFFECTS OF THE 2020 AND 2021 FILING SEASON POSTPONEMENTS ON TIMELY FILED REFUND CLAIMS

To assist taxpayers during the COVID-19 pandemic, the IRS postponed the 2019 tax return filing deadline from April 15 to July 15, 2020, and postponed the 2020 tax return filing deadline for individuals from April 15 to May 17, 2021,<sup>82</sup> together with several other disaster postponements. These modifications to the 2020 and 2021 filing seasons were much needed and appreciated by taxpayers, but good intentions can lead to unintended consequences. Taxpayers who file a claim for refund after April 15 for tax years 2019 or 2020 may have a timely filed claim, but the amount may be *unexpectedly rejected* in 2023 or 2024 because the IRS *postponed* the filing deadlines in 2020 and 2021 rather than *extended* them.

IRC § 6511 provides a two-prong test for filing a claim for credit or refund:

- First, a date by which a taxpayer must file a claim with the IRS, and
- Second, a limitation on the amount the taxpayer may claim, which is determined by “looking back” from the date of the claim to an earlier payment date.<sup>83</sup>

Under the first prong, a taxpayer generally must file a claim for credit or refund within three years from the time the return was filed, or two years from the time the tax was paid, whichever expires later. If a taxpayer files his or her claim within the three-year period, then the amount of the credit or refund cannot “exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.”<sup>84</sup> The IRS deems advance payments made during any calendar year through withholding as paid by an employee on the 15th day of the fourth month following the close of the taxable year, which typically coincides with the return due date for a taxpayer.<sup>85</sup> Therefore, the second prong of this test for tax year 2019 and 2020 returns will cause unanticipated denials of timely refund claims filed after April 15 (of 2023 or 2024) if not corrected for taxpayers who did not submit a timely extension request, as the withholding will not have been paid within the three years plus the period of an extension prior to the filing of the claim.

### **Objective 18 for FY 2022 – TAS will continue to advocate to mitigate the unintended impact of the filing season postponements to taxpayers whose advance payments (including withholding and quarterly payments) no longer correspond to the due date for 2019 and 2020 tax returns.**

- Activity 1: Advocate for publicized administrative guidance, such as the issuance of a Treasury regulation, revenue ruling, revenue procedure, notice, or other administrative guidance to provide relief to taxpayers whose refund claims may be affected by the postponed tax year 2019 and 2020 filing due dates.

82 See IRS, Notice 2020-23, 2020-18 I.R.B. 742 (cross referencing Rev. Proc. 2018-58, 2018-50 I.R.B. 990); IRS, Notice 2021-21, 2021-15 I.R.B. 986.

83 IRM 25.6.1.10.2.7, Claims for Credit or Refund – General Time Period for Submitting a Claim (Apr. 28, 2017).

84 IRC § 6511(b)(2)(A).

85 IRC § 6513(b)(1).



- Activity 2: Analyze possible negative impact on refund claims of other postponements including weather-related natural disaster relief provided during the last three filing seasons.
- Activity 3: If appropriate, advocate for additional publicized administrative guidance to provide relief to taxpayers whose refund claims may be affected by other disaster relief postponements.
- Activity 4: If relief is not provided before the tax filing season 2023, inform the public of the refund payment risks associated with the tax return due dates postponed in 2020 and 2021 to prevent denial or reduction of refunds pursuant to the “look-back” rule, and communicate the risk with stakeholders to ensure consistent messaging on this time-sensitive issue.

## 19. IMPROVE TIMELINESS OF TENTATIVE ALLOWANCE REFUNDS DURING NATIONAL EMERGENCIES

The net operating loss (NOL) deduction provisions in IRC § 172 have been through significant changes in the last few years. Prior to the Tax Cuts and Jobs Act (TCJA), an NOL generally could be carried back two years and forward 20 years and claimed as a deduction in the carryback/carryforward years. Under TCJA, most NOLs incurred in years after 2017 could be carried forward only and not carried back, and the amount of an NOL deduction from such NOLs was limited to 80 percent of taxable income without taking into account any NOL deduction.<sup>86</sup> Section 2303 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act amended IRC § 172 to create opportunities for business and individuals to get an infusion of cash by allowing taxpayers to carry back NOLs, including non-farm NOLs, arising from tax years beginning in 2018, 2019, and 2020, to the five prior tax years.<sup>87</sup>

The IRS has 90 days to process an application for a tentative refund based on a carryback (Forms 1045 or 1139) filed within 12 months of the end of the year in which the NOL arose.<sup>88</sup> Historically, the IRS has processed most tentative applications and issued refunds within 45 days and avoided incurring, calculating, and paying interest on the refund amount.<sup>89</sup> This past year, many individuals and businesses took advantage of the changes to IRC § 172 made by the CARES Act to carry back NOLs and filed an application for tentative refund. TAS anticipates many taxpayers will file applications for refunds for the 2020 taxable year. Significant delays have occurred in the processing and payment of these applications for refunds as IRS employees processing these paper-filed NOL applications for refund must manually input the claims. With reduced staff and increased workload, claims have been backing up, and most are not being paid within the 45-day window, triggering additional delays for the calculation and payment of interest.

### Objective 19 for FY 2022 – TAS will work with the IRS to identify delays and propose recommendations to improve the timely payment of tentative allowances.

- Activity 1: Work with the IRS to identify issues causing delays, expedite relief to taxpayers, propose recommendations, and collaborate on improved timely payments, including monitoring inventory levels for Form 1045 for individuals and Form 1139 for businesses; monitoring Carryback/Carryforward

<sup>86</sup> Pub. L. No. 115-97, § 13302, 131 Stat. 2054 (2017).

<sup>87</sup> See CARES Act, Pub. L. No. 116-136, § 2303, 134 Stat. 281 (2020).

<sup>88</sup> IRM 21.5.9.5(3), Carryback Processing (Oct. 1, 2020).

<sup>89</sup> Under IRC § 6611(e)(1), the IRS is not allowed to pay interest when the refund is issued within 45 days. See also IRM 21.5.9.5.7, Carryback Interest (Oct. 1, 2020).



Claims (NOLs and Forms 1045 and 1139) cases over 45 days old; and evaluating the effect of other issues on the timely processing of claims, *e.g.*, mail delays, staffing challenges, interest computations, etc.

- Activity 2: Advocate for a dedicated fax line or other means of delivery to expedite the processing of paper forms.
- Activity 3: Recommend the IRS assign a specific employee unit dedicated to processing Forms 1139 and 1045, similar to its pre-TCJA processing.
- Activity 4: Work with the IRS to develop a communication strategy to ensure the IRS is transparent and keeps taxpayers informed about the status of their application for refund and the anticipated delays.

## 20. ADVOCATE FOR EFFICIENCIES AND ADDITIONAL IRS RESOURCES TO TIMELY PROCESS INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER APPLICATIONS

Individual Taxpayer Identification Numbers (ITINs) allow taxpayers who are ineligible for Social Security numbers to file returns and pay taxes required under the law.<sup>90</sup> In 2007, the IRS assigned almost 1.77 million ITINs to resident and nonresident alien taxpayers.<sup>91</sup> By October 2008, it had assigned over 14 million ITINs in about the first 12 years of the ITIN program.<sup>92</sup> Yet, during 2019, the IRS assigned fewer than 375,000 new ITINs on about 333,000 tax returns submitted that year and renewed about 719,000 ITINs originally assigned from applications filed and processed in previous years.<sup>93</sup> In 2020, the IRS assigned only 292,000 ITINs on nearly 267,000 returns received and renewed only about 418,000 ITINs.<sup>94</sup> Since 2012, the IRS has steadily underdelivered on the number of ITIN applications and associated returns it projected it would process each year.<sup>95</sup>

Despite a drop in overall applications and the filing of returns associated with them, the IRS is falling further behind in timely processing and assigning ITINs. In January 2020, the IRS carried over about 39,000 unworked Forms W-7, Application for IRS Individual Taxpayer Identification Number, from 2019,<sup>96</sup> but this year, partially attributable to the COVID-19 pandemic and the general backlog of correspondence at the

90 Any person required to make a return, statement, or other document to the IRS is required to include in such return, statement, or other document a taxpayer identifying number (TIN). See IRC § 6109; Treas. Reg. 301.6109-1. See also IRC §§ 1, 2, 61, 871, 7701(b).

91 IRS response to TAS information request (July 25, 2008). The IRS assigned 1,768,902 ITINs. Note that the majority of ITINs are assigned to resident aliens. See also National Taxpayer Advocate 2008 Annual Report to Congress 126-140, at 127 (Most Serious Problem: *Taxpayer Service Issues: IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*).

92 IRS, ITIN Operations Controls Report ITIN 4340 (Oct. 25, 2008); total assigned records: 14,235,915; total primary assigned: 7,196,338; total other assigned: 7,040,231. See also National Taxpayer Advocate 2008 Annual Report to Congress 126-140, at 127 (Most Serious Problem: *Taxpayer Service Issues: IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*).

93 IRS, ITIN Production Report (Dec. 28, 2019). The IRS assigned 374,394 new ITINs on 332,899 returns processed and renewed 719,126 ITINs. The IRS received a total of 402,410 ITIN applications with returns; however, the IRS rejected 69,511 ITIN applications associated with returns.

94 IRS, ITIN Production Report (Dec. 26, 2020). The IRS assigned 292,006 new ITINs on 267,310 returns processed and renewed 418,190 ITINs. The IRS received a total of 347,302 ITIN applications with returns; however, the IRS rejected 79,992 ITIN applications associated with returns.

95 National Taxpayer Advocate 2017 Annual Report to Congress 181-194, at 190 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): The IRS's Failure to Understand and Effectively Communicate with the ITIN Population Imposes Unnecessary Burden and Hinders Compliance*).

96 IRS, ITIN Production Report (Dec. 28, 2019). At the end of processing year (PY) 2019, there were 12,765 unworked Forms W-7 for new ITINs on 8,410 suspended tax returns and 26,511 unassigned renewal applications.

IRS campuses, it carried over nearly 150,000 unworked applications from 2020.<sup>97</sup> By May 2021, the IRS inventory of unworked Forms W-7 exceeded 236,000.<sup>98</sup>

The continuing IRS delays in assigning ITINs from applications that taxpayers submitted in 2020 have caused delays in the processing of the associated paper tax returns and the refunds of any overpayments. Moreover, the delays prevent these same taxpayers from electronically filing their tax year 2020 returns. Taxpayers and certified acceptance agents (CAAs) who prepare the ITIN applications have received no personal updates from the IRS regarding the delays in processing their ITIN applications, and there has been only one update on IRS.gov since March acknowledging the backlog and asking applicants to wait indefinitely for the IRS to process their applications and the associated returns.<sup>99</sup>

At a time when ITIN-eligible taxpayers file tax returns to both comply with federal filing requirements and to qualify for federal and state COVID-19 relief payments,<sup>100</sup> the IRS should be prepared to process more ITIN applications than it did in 2019 and 2020. But it is neither meeting the current demand nor allocating sufficient resources.

**Objective 20 for FY 2022 – TAS will provide recommendations to improve timely processing of ITIN applications and associated tax returns and promote communications and education for the resident alien community.**

- Activity 1: Advocate for sufficient staffing for processing of Forms W-7.
- Activity 2: Identify ITIN processing procedures that unduly delay or deny the assignments of ITINs and provide recommendations to improve the timeliness of the processing of ITINs.
- Activity 3: Encourage adoption of new measures for CAAs to facilitate documentation requirements and expedite ITIN processing, such as permitting CAAs to authenticate documentation presented in virtual conferences, and continue to advocate for the IRS to develop and implement a procedure that allows all applicants to apply for an ITIN throughout the year and submit alternative proof of a filing requirement other than an annual tax return.
- Activity 4: Work with the IRS to develop outreach messages to the undocumented immigrant community to assist with timely filing of tax returns and an understanding of the ITIN application procedures.

**21. END SYSTEMIC ASSESSMENT OF INTERNATIONAL INFORMATION RETURN PENALTIES THAT HARM TAXPAYERS AND BURDEN THE IRS**

The National Taxpayer Advocate recognizes the importance of international information return (IIR) penalties in fostering voluntary tax compliance. However, the IRS's systemic assessment of these penalties often produces excessively large penalties disproportionate to any underlying income tax liability. The IRS assesses IIR penalties on returns it considers to be filed late, but more than 55 percent of systemically assessed IRC §§

<sup>97</sup> IRS, ITIN Production Report (Dec. 26, 2020). At the end of PY 2020, there were 45,193 unassigned Forms W-7 for new ITINs on 32,646 suspended tax returns and 104,771 applications for renewals.

<sup>98</sup> IRS, ITIN Production Report (May 15, 2021). There were 103,300 unassigned Forms W-7 for new ITINs on 98,664 tax returns and 133,008 unassigned applications for renewals.

<sup>99</sup> IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited May 25, 2021).

<sup>100</sup> See SAMS issue 49233, referencing the California Golden State stimulus payment.

6038 and 6038A penalties are abated because the returns were timely, because reasonable cause relief was granted, or in situations where the failure-to-file penalty on the related Form 1120 or Form 1065 filing is abated under the First Time Abatement (FTA) provisions or the return has no tax due.<sup>101</sup> Taxpayers and the IRS expend significant time, energy, and money addressing penalties that the IRS should not have assessed. Thus, these systemic assessments are ineffective in promoting taxpayer compliance and do not promote equity and fairness.

Because the penalties are immediately assessed, taxpayers' recourse is to rely on IRS discretion to grant a reasonable cause abatement of the penalties, request a Collection Due Process proceeding, or pay the assessed penalty and file suit in district court or the Court of Federal Claims seeking a refund. One means of proactively addressing this disadvantage to taxpayers is to send preassessment correspondence, giving potentially impacted taxpayers the opportunity to explain why the IRS should not assess the penalty. This approach would educate taxpayers and minimize the inefficient and burdensome practice of first assessing and then abating these penalties. Further, it would contribute to tax equity by placing the IRS in a better position to distinguish between good-faith mistakes and intentional tax noncompliance.

**Objective 21 for FY 2022 – TAS will work with the IRS to end systemic assessment of IIR penalties and replace that system with an improved, fair program.**

- Activity 1: Recommend the IRS send taxpayers a proposed penalty notice to allow them to provide mitigating evidence such as reasonable cause; if timely filed, proof of timely filing; or application of the FTA administrative relief.
- Activity 2: Recommend the IRS provide taxpayers 60 days to respond to proposed penalty notices and give IRS employees time to review and consider reasonable cause relief, FTA relief, or the issue of timeliness.
- Activity 3: Advocate for the IRS to reinstitute a penalty-free voluntary disclosure program, similar to the former FAQ 18 of the 2012 Offshore Voluntary Disclosure Program, in which taxpayers will be encouraged to come forward, file delinquent information returns, and be compliant for future years. Specifically address those taxpayers who do not have other tax liabilities besides penalties associated with the missing IIRs, are not under examination, and have not been contacted for the delinquent IIRs.
- Activity 4: Continue advocating for the IRS to stop systemic assessment of IIR penalties.<sup>102</sup>

<sup>101</sup> As of the end of FY 2020, the IRS had abated 55 percent of IRC §§ 6038 and 6038A penalties systemically assessed in 2018. The number of penalty abatements may increase as additional time elapses. The annual abatement rate for systemic §§ 6038 and 6038A IIR penalties assessed from calendar years 2014 through 2017 was at least 64 percent. See National Taxpayer Advocate 2020 Annual Report to Congress 119-131 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*). See also IRM 20.1.9.3.5(3)(b), Reasonable Cause (Jan. 29, 2021).

<sup>102</sup> Systemic penalties are those that are electronically asserted as an automatic matter whenever a late-filed corporate or partnership tax return includes an information return required by IRC §§ 6038 and 6038A and other foreign information reporting provisions in Chapter 61.

## 22. ADVOCATE FOR IMPROVED VOLUNTARY DISCLOSURE PRACTICE TO REDUCE TAXPAYER UNCERTAINTY AND ENCOURAGE PARTICIPATION

For about 70 years, taxpayers have had the opportunity to participate in an informal voluntary disclosure practice (VDP) that allows taxpayers with potential criminal exposure for prior tax and reporting issues to voluntarily file correct returns.<sup>103</sup> If taxpayers' disclosures were timely, truthful, and complete, the program provided taxpayers protection from criminal prosecution and the ability to come into compliance in exchange for payment of tax, interest, and civil penalties. VDP is a matter of IRS internal policy that encourages and rewards taxpayers who self-correct prior unreported income or erroneous filing positions before the IRS contacts them. The IRS welcomes voluntary disclosures as a low-cost source of revenue that continues through future tax years, helps reduce current and future tax gap impact, and utilizes IRS resources efficiently. But recent changes to the VDP unnecessarily put taxpayers at risk of criminal prosecution simply to determine whether their disclosure is eligible for the VDP and give revenue agents excessive discretion to assert penalties.

On November 20, 2018, the IRS released a new interim guidance memorandum (IGM) to address updated VDP procedures.<sup>104</sup> The new VDP procedures are significantly different than any prior VDP and substantially more onerous and uncertain than the program it replaced. The principles underlined in the IGM were incorporated in Form 14457, Voluntary Disclosure Practice Preclearance Request and Application, its Instructions, and in IRM 9.5.11.9, Voluntary Disclosure Practice.<sup>105</sup>

To determine eligibility in the new VDP, taxpayers are now required to admit potentially incriminating details of their tax fraud in a written questionnaire that is signed under penalties of perjury *before obtaining preliminary acceptance* into the VDP, raising risks of self-incrimination without certainty from the IRS. If the taxpayer's disclosure is timely and satisfies voluntary disclosure requirements, the IRS's Criminal Investigation (CI) division will issue a "preclearance letter" to the taxpayer and transfer the taxpayer's case to IRS Examination for an audit. Preclearance was not a requirement under the historical VDP. Rather, the determining factor was whether the IRS was already investigating the taxpayer.

Once taxpayers are assigned to a civil revenue agent, their case will undergo an audit that follows standard examination procedures. Examiners are instructed to develop cases, use information gathering tools, and determine proper tax liabilities and applicable penalties. Taxpayers must fully cooperate but have the right to appeal the examination results to the IRS Independent Office of Appeals. The IRS expects voluntary disclosures will be resolved by agreement with full payment of all taxes, interest, and penalties for the disclosure period.

Presumably, if a taxpayer refuses to ultimately agree to all proposed tax and penalty computations, the examiner may label the taxpayer as "uncooperative" and may request that CI revoke preliminary acceptance.<sup>106</sup>

<sup>103</sup> For a discussion of the evolution and history of voluntary disclosure, see *United States v. Tenzer*, 127 F.3d 222 (2d Cir. 1997) and *United States v. Tenzer*, 213 F.3d 34 (2d Cir. 2000) (*Tenzer II*). See also IRM 9.5.11.9, Voluntary Disclosure Practice (Dec. 02, 2009) (the last version of the original VDP).

<sup>104</sup> Updated IRS Voluntary Disclosure Practice: Interim Guidance Memorandum (IGM) LB&I-09-1118-014 (Nov. 20, 2018). The memorandum expired on November 20, 2020 and has been removed from the IRS website.

<sup>105</sup> IRM 9.5.11.9, Voluntary Disclosure Practice (Sept. 17, 2020); Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Apr. 2020); Scott D. Michel and Mark E. Matthews, *The 2020 Revision to the Internal Revenue Manual's Voluntary Disclosure Practice: More Consistency with Greater Risk*, BLOOMBERG LAW NEWS (Jan. 12, 2021).

<sup>106</sup> See IRM 9.5.11.9, Voluntary Disclosure Practice (Sept. 17, 2020) (discussing cooperation).

The new VDP penalty regime provides general guidance to IRS examiners while still leaving agents with substantial discretion. If taxpayers cooperate and their disclosures are timely and accurate, they should anticipate a 75 percent civil fraud penalty<sup>107</sup> or fraudulent failure-to-file penalty<sup>108</sup> on the largest tax deficiency in the disclosure period; a 50 percent willful penalty for failure to file the Report of Foreign Bank and Financial Accounts (FBAR)<sup>109</sup> for the tax year during the disclosure period that had the highest aggregate balance of offshore assets; and penalties for estate and gift taxes, employment taxes, and excise taxes, based on the facts and circumstances. But if taxpayers do not agree to all proposed changes or failures are evident, revenue agents may expand the audit to include additional tax years outside the normal six-year disclosure period and penalty assertions to include additional civil fraud penalties, international information return penalties, and FBAR penalties on up to all tax years.<sup>110</sup>

The changes raise the question of whether the new VDP program achieves the IRS's historical policy to encourage taxpayers to voluntarily identify themselves. The new VDP lacks certainties for taxpayers, exposes them to possible criminal prosecution, and gives revenue agents broad penalty discretion. These changes may discourage taxpayers from participating in the VDP and undermine the program's chance for success.

**Objective 22 for FY 2022 – TAS will research the effectiveness of the new VDP, announced November 20, 2018, as compared to the earlier VDP it replaced.**

- Activity 1: Propose program changes, if appropriate, based upon TAS findings and data-driven analysis, including impact to years affected by the VDP, applicable penalties, and possible changes to the preclearance process.

<sup>107</sup> IRC § 6663.

<sup>108</sup> IRC § 6651(f).

<sup>109</sup> 31 U.S.C. § 5321(a)(5)(C). See also IRM 4.63.3.26.2(7), Penalty Framework (Apr. 27, 2021). A willful FBAR penalty can be assessed, which is the larger of 50 percent of the unreported foreign account balance at the time of the violation or a penalty of \$136,399 for penalties assessed on or after January 28, 2021. 31 U.S.C. § 5321(a)(5)(C)(i) and 31 C.F.R. § 1010.821 (2021).

<sup>110</sup> See IRM 4.63.3.26.1, Voluntary Disclosure Practice Requirements (Apr. 27, 2021).

## TAS Case Advocacy and Other Business Objectives

The Taxpayer Advocate Service (TAS) plays an integral role in helping taxpayers experiencing or about to experience significant economic hardship or irreparable harm as a result of an IRS issue or outstanding liability. TAS works to protect taxpayer rights and help individuals, business owners, and exempt organizations resolve tax-related issues that they have not been able to resolve on their own through normal IRS channels. Our local case advocates work directly with taxpayers on identifying issues, researching solutions, and advocating on taxpayers' behalf within the IRS. We also work to identify and propose solutions for larger systemic problems that may be affecting many taxpayers across the United States. Our goal is to continuously improve our internal processes and advocacy efforts on behalf of taxpayers.

### 1. EXPAND DIGITAL INTERACTION WITH TAXPAYERS

TAS is bridging the digital divide with our taxpayers during COVID-19 and beyond. Over the past year, TAS has expanded the use of Zoom.gov for outreach events and has engaged with IRS Information Technology (IT) to configure a secure web tool to allow taxpayers to transmit documentation electronically. This new documentation upload tool will provide a digital means for taxpayers to easily submit hardship or other documentation associated with existing TAS cases and new Form 911 requests for TAS assistance. TAS is also focused on identifying ways for certain trusted partners, such as congressional offices, to communicate with us electronically to enhance service to taxpayers. Finally, as the IRS continues implementation of an Enterprise Case Management (ECM) system, TAS is pursuing opportunities to bring some of its processes into the new streamlined environment.

#### **Objective 1 for Fiscal Year (FY) 2022 – TAS will expand its use of digital tools to interact with taxpayers, practitioners, and congressional offices.**

- Activity 1: Implement the documentation upload tool to allow for digital upload of documents in certain situations.
- Activity 2: Evaluate if further expansion and enhancements of the documentation upload tool beyond the initial rollout are possible and beneficial.
- Activity 3: Identify options for TAS to easily communicate electronically with congressional offices.
- Activity 4: Partner with the IRS to identify opportunities for TAS to expand its footprint in ECM.

### 2. IDENTIFY CASE PROCESSING EFFICIENCIES

To prepare for integrating TAS into ECM, TAS continues to review its current processes and identify potential efficiencies. For example, TAS identifies cases meeting our criteria through various sources and inputs them on the Taxpayer Advocate Management Inventory System for managing the workflow and processing of TAS inventory. Cases are assigned to a Local Taxpayer Advocate (LTA) office and worked by a TAS case advocate until all issues are resolved and the case is closed. Over the years, our number of cases have increased while the process we use to work cases has changed little. As technology develops, we expect to identify opportunities to increase efficiencies to save administrative employee time that could be better spent on advocacy work.



**Objective 2 for FY 2022 – TAS will identify case process efficiencies.**

- Activity 1: Partner with the Wage and Investment (W&I) Lean Six Sigma organization to identify and map our case process steps to improve process efficiencies and effectiveness.
- Activity 2: Identify which efficiencies identified as part of the Lean Six Sigma evaluation should be implemented and develop implementation plans.

**3. UPDATE SERVICE LEVEL AGREEMENTS**

Service Level Agreements (SLAs) are nationally negotiated agreements between TAS and each IRS Business Operating Division (BOD) or function that outline procedures and responsibilities for processing TAS casework when the authority to complete case transactions rests outside of TAS. These agreements have not been updated in over ten years, and while the basic framework within these agreements is sound, there are areas needing improvement. TAS is working with the BODs to update the SLAs and move them into the Internal Revenue Manual (IRM) to make the SLAs easier to update and keep current moving forward.

**Objective 3 for FY 2022 – TAS will update existing SLAs.**

- Activity 1: Collaborate with BODs and functions to replicate the existing SLAs into unique sections within the IRM.
- Activity 2: Work with BODs and functions to finalize a new IRM section outlining the SLA negotiation process and the process TAS and the IRS will use to resolve disagreements during the negotiation process.
- Activity 3: Begin ongoing discussions with BODs and functions to update the SLAs to reflect current work processes.

**4. EVALUATE THE EXPANSION OF TAS DELEGATED AUTHORITIES**

To assist taxpayers more efficiently, the Commissioner delegated to the National Taxpayer Advocate certain tax administration authorities that do not conflict with or undermine TAS's unique statutory mission but allow TAS to resolve routine problems.<sup>1</sup> These authorities have been in place and relatively static since 2007.<sup>2</sup> In the intervening years, IRS processes and the problems taxpayers experience have changed, but TAS's delegated authorities generally have not. To assist taxpayers quickly, TAS is reevaluating its delegated authorities and whether additional authorities would benefit taxpayers and speed resolution of taxpayer issues without impacting our independence.

**Objective 4 for FY 2022 – TAS will develop a proposal to expand its delegated authorities.**

- Activity 1: Identify additional delegated authorities for regular use by TAS to improve taxpayer service without compromising TAS's independence.

1 IRM 1.2.2.12.2, Delegation Order 13-2 (Rev. 1), Authority of the National Taxpayer Advocate to Perform Certain Tax Administration Functions (Mar. 3, 2008).

2 On August 20, 2007, then Acting Commissioner Brown modified the authorities delegated to TAS and memorialized them in Delegation Order 13-2 (Rev. 1), Authority of the National Taxpayer Advocate to Perform Certain Tax Administration Functions.



- Activity 2: Identify additional delegated authorities for emergency situations, as declared by the National Taxpayer Advocate and the appropriate IRS official, when IRS operations are partially or completely suspended (*i.e.*, COVID-19 pandemic).

## 5. EXPAND OUTREACH AND PROMOTE FASTER RESOLUTION OF TAXPAYER ISSUES

Through our case advocacy efforts, LTAs identify issues impacting their local community and customize outreach efforts specific to their needs. LTAs partner with congressional offices and the Taxpayer Advocacy Panel to conduct outreach events; visit local shelters to assist victims of domestic violence; reach out to immigrant populations, senior citizen communities, and Native Americans; and partner with other local agencies who assist members of the local community. Though the pandemic limited some of TAS's outreach efforts, our employees were able to use Zoom and other virtual platforms to continue community engagement. We will continue to explore virtual outreach opportunities allowing us to expand our presence to areas and groups we might not otherwise be able to reach even as our offices begin to open.

To align with this effort and to build off our 2019 Russell Research study on TAS underserved taxpayers, TAS engaged an outside vendor to develop a communications strategy to reach this underserved population. This new communications strategy is aimed at raising awareness of TAS among audiences not served by our outreach efforts.

LTAs and their staff members also conduct Problem Solving Day (PSD) events to meet with taxpayers to discuss the issues they encounter in their interactions with the IRS. In some instances, TAS employees resolve taxpayer issues on the day of the event. In FY 2022, TAS will look to partner with the IRS to engage other functions in PSD events to expand the issues that can be resolved on the spot to enhance taxpayer service.

Finally, TAS continues to expand the Taxpayer Roadmap Online Tool to include additional IRS processes, and we are exploring making the tool available in Spanish. As we look to further expand this tool, we continue to monitor IRS use of notices and letters to determine what additional content is of most value.

### **Objective 5 for FY 2022 – TAS will expand its outreach efforts with a focus on reaching the underserved and giving taxpayers the tools to help resolve their issues sooner.**

- Activity 1: Expand the use of virtual outreach, including partnering with the W&I Division on the deployment of Virtual Service Delivery kiosks on Native American reservations to enhance and expand Native Americans' ability to reach TAS.
- Activity 2: Develop and implement an outreach strategy to reach our underserved taxpayers, who include but are not limited to individuals and businesses unaware of the benefits TAS provides at no cost.
- Activity 3: Partner with the IRS to include our IRS counterparts at PSD events to expand the issues that can be resolved the day of the event.
- Activity 4: Expand the digital Taxpayer Roadmap Online Tool to include additional IRS processes and explore providing the tool in Spanish.

## 6. EXPLORE NEW RECRUITMENT OPPORTUNITIES TO SUPPORT INCREASED HIRING NEEDS

TAS continues to experience a shortage of trained staff due to high attrition rates and difficulty in recruiting and hiring qualified candidates. By the end of 2024, over half of all current TAS employees will be eligible to retire. To address the current and future staffing challenges, TAS is considering ways to expand recruitment efforts, including partnering with the IRS Human Capital Office to explore resources that will help reach a larger audience of potential candidates.

### **Objective 6 for FY 2022 – TAS will use new platforms to recruit qualified candidates to address ongoing staffing needs.**

- Activity 1: Use additional recruiting platforms to post job announcements, including state government websites, to recruit LTAs and Handshake.com to recruit recent graduates.
- Activity 2: Expand the use of alternative hiring authorities such as the Veterans Recruitment Appointment and Schedule A (employees with disabilities).
- Activity 3: Explore the use of internship opportunities by posting internship announcements on USAJOBS and using the Veterans Affairs Non-Paid Work Experience program.

## 7. REVAMP NEW HIRE TRAINING

TAS will develop our workforce through classroom, on-the-job training, and self-study curricula. While the pandemic has forced us to pivot to virtual training, we continue to deliver a robust training curriculum to our newly hired employees, with a focus on case advocates and intake advocates. We are continuing to refine our virtual training to ensure it remains interactive and effectively meets employees' needs. As our number of new hires increases, we are also reevaluating our existing training — from course content and delivery to post-training on-the-job instruction — to ensure we can train larger numbers of employees without compromising the quality of the training.

### **Objective 7 for FY 2022 – TAS will modernize and expand its training to ensure all employees, especially new hires, receive timely training to be successful in their position.**

- Activity 1: Revamp existing case advocate and intake advocate training using a combination of virtual, in-person, and self-study methods to allow for quicker training of new hires. This will include looking to see where we can partner with other parts of the IRS to assist in training delivery, such as Integrated Data Retrieval System training.
- Activity 2: Deploy a self-study course for all lead case advocates.
- Activity 3: Design new manager training curriculum.
- Activity 4: Support IRS Taxpayer First Act training initiatives, including the developing IRS University model.

## 8. EXPAND LEADERSHIP DEVELOPMENT OPPORTUNITIES

TAS supports career development through mentoring, coaching, and leadership programs. We encourage our employees to develop a career learning plan in partnership with their managers and to request a mock

interview as part of their career development. TAS established the Leadership Development Office in 2020 to enhance TAS leadership programs by offering direct support for TAS employees interested in developing their leadership skills. This office is taking an increasingly central role in TAS as our need to develop and support new managers grows as experienced managers retire.

**Objective 8 for FY 2022 – TAS will continue to support and expand leadership development.**

- Activity 1: Expand the services of our in-house Coaching Program by creating a Coaching Curriculum to be delivered to all TAS managers, Leadership Readiness Program instructors, and a TAS in-house coaching cadre designed to support leadership onboarding and targeted Leadership Succession Review (LSR) competencies.
- Activity 2: Strengthen our Leadership Readiness Programs by creating mechanisms for structured feedback to ensure program participants are given meaningful comments and reactions to their detail assignments to help them develop leadership skills and identify areas for improvement.
- Activity 3: Promote the use of the recently launched TAS Detail Database to create transparency when advertising non-bargaining unit detail opportunities within TAS.
- Activity 4: Support LSR and Web Continuous Learning Plan/Individual Development Plan development by providing educational materials and individual assistance to employees and their managers, including identifying competency-specific training.

## TAS Research Objectives

TAS Research focuses on understanding how IRS procedures and tax law affect taxpayers and how taxpayers react to IRS actions or inactions. We use our research to provide feedback and recommendations based upon our findings. TAS Research's overall objectives are to improve IRS efficiencies and assist the IRS with balancing compliance and enforcement efforts while protecting taxpayer rights and providing quality service. Research into the impact of tax law and the administration of taxes provides the necessary data to recommend changes that are beneficial to taxpayers and tax administration. Over the years, TAS research has led to detecting problems in administering the tax laws. Moreover, this data informs our recommendations for legislative and procedural changes in the design and administration of the tax laws and is shared with the IRS, members of Congress, and the public.

Four research projects are scheduled for the remainder of fiscal year (FY) 2021 and FY 2022.

### 1. STUDY TAXPAYER NEEDS AND PREFERENCES FOR IRS ONLINE ACCOUNT ACTIVITIES

The IRS allows individual taxpayers to establish an online account and perform online activities<sup>1</sup> including:

- Viewing information such as balance due and payment history;
- Establishing an installment agreement or making a payment;
- Accessing account transcripts;
- Checking on the status of a refund;
- Verifying identity when requested by the IRS or obtaining an Identity Protection Personal Identification Number;
- Applying for an Employer Identification Number; and
- Verifying income for financial transactions such as obtaining a loan.

The National Taxpayer Advocate has advocated for a robust online account containing complete information in an easy-to-understand format with a singular access point that would reduce or eliminate the need for many individuals, businesses, or practitioners to contact the IRS via telephone. Effective self-service tools with specific account details will help save scarce IRS resources. However, to be effective, the IRS needs to offer online services that taxpayers find to be beneficial and easy to use. While the online activities offered are helpful to individual taxpayers, the IRS should prioritize developing additional online functionality and services, considering taxpayer needs and preferences and providing similar services to businesses or other taxpayers.

Additionally, taxpayers must be able to easily establish and maintain online accounts. Current authentication requirements often thwart taxpayers' ability to establish and access online accounts. Fewer than half of

<sup>1</sup> Business and other taxpayers do not always have similar online account functionality.

the individuals who have sought to establish an online account with the IRS have succeeded in doing so.<sup>2</sup> Taxpayers' inability to establish and use online accounts renders the accounts meaningless. As the IRS moves to the Secure Access Digital Identity system using a credentialing service provider, it should ease the authentication challenges taxpayers are currently experiencing.

This project will review how taxpayers access each digital tool, the online account features offered to taxpayers, the type of taxpayer that can access the tool, and what authentication requirements accompany the IRS digital tools. These features and their authentication requirements will be compared to those established by taxing authorities in states, other countries, and other commercial financial institutions. This study will also determine what account activities individuals, businesses, and other taxpayers or their representatives in the United States would most like to be able to conduct online and what authentication criteria they could meet.

**Objective 1 for FY 2022 – TAS will determine taxpayer needs and preferences for establishing online accounts with the IRS and authenticating secure access to those accounts.**

- Activity 1: Ascertain what common online account activities taxpayers in states or other nations can perform.
- Activity 2: Determine what authentication procedures taxpayers in states or other nations must use to access their accounts.
- Activity 3: Quantify unauthorized accesses in the online accounts of the taxing authorities of states or other nations or the online accounts of various financial institutions.
- Activity 4: Determine what online account features and capabilities U.S. taxpayers want to access.
- Activity 5: Determine what authentication criteria U.S. taxpayers could meet.
- Activity 6: Analyze if the authentication criteria that U.S. taxpayers can meet differs by demographics such as ethnicity, gender, or income.

## **2. STUDY TAXPAYER NON-RESPONSE TO CERTAIN IRS ACTIONS**

The IRS uses notices and letters to communicate with taxpayers as a relatively inexpensive means of communication. Sometimes, the IRS needs to communicate with taxpayers to obtain additional information, correct perceived inaccuracies, audit reported amounts, or simply transmit information to taxpayers about taxes due and owed to the IRS. When a taxpayer does not respond to the letter or notice, the IRS assumes that its determination is correct. For example, the IRS presumes that a taxpayer whose refund is frozen by the Refund Integrity Verification Organization has submitted a fraudulent refund claim when he or she does not respond to the IRS notice requesting identity verification. Similarly, a taxpayer who does not respond to a correspondence audit notice or a math error notice will be assessed in accordance with the IRS determination.

While these procedures are efficient from an IRS perspective, taxpayers may be harmed. For instance, a study on taxpayer barriers during Earned Income Tax Credit (EITC) audits indicated that over a quarter of the

<sup>2</sup> IRS, Office of Privacy, Governmental Liaison and Disclosure response to TAS information request (Oct. 13, 2020) (stating that the authentication rate for IRS online applications requiring the highest level of assurance authentication, including online taxpayer accounts, was 42 percent in FY 2020).

taxpayers did not understand they were being audited.<sup>3</sup> Likewise, a 2011 study of math error notices issued to taxpayers where a dependent's Taxpayer Identification Number (TIN) was incorrect indicated that about 40 percent of sampled cases appeared to have a correct TIN for the dependent but with transposed numbers.<sup>4</sup> Nevertheless, these taxpayers did not respond, costing the taxpayers an estimated \$44 million of potential refunds.<sup>5</sup> Taxpayers, particularly those with lower incomes, often do not respond to IRS notices.<sup>6</sup>

This project will seek to quantify the reasons taxpayers did not respond to certain IRS notices or letters and to recommend changes to IRS procedures that would improve the response rate to IRS notices. Because the reasons for non-response may vary by the type of IRS notice or other correspondence, we plan to conduct projects that explore the lack of taxpayer response to IRS correspondence depending on the general reason the IRS has contacted the taxpayer. We expect this study may include analysis of internal data along with potential taxpayer focus groups and surveys. Initially, this study will focus on taxpayer non-response in correspondence audits and refund freezes in suspected identity theft. The project will also develop a list of other instances where taxpayers rarely respond to IRS actions, including non-response to collection notices, math error notices, etc.

### **Objective 2 for FY 2022 – TAS will analyze why taxpayers often do not respond to various types of IRS notices and letters and how to improve the response rate.**

- Activity 1: Develop a list of notices and letters with high non-response rates.
- Activity 2: Review internal processes to identify ways to improve efficiency when processing taxpayer responses.
- Activity 3: Identify ways to clarify communication so taxpayers understand what actions they should take.
- Activity 4: Conduct focus groups and surveys with taxpayers who have not responded to specific types of IRS correspondence to determine and quantify the reasons for non-response.

## **3. STUDY THE EFFECT OF POTENTIAL CHANGES TO THE EARNED INCOME TAX CREDIT STRUCTURE**

In its FY 2020 Objectives Report to Congress, TAS included a study that recommended a variety of proposed computational changes to the EITC.<sup>7</sup> The most significant recommended change included altering the credit to include both a per-worker credit based on income and a universal per-child benefit. The study also recommended revising the definition of a qualifying child to more closely reflect the circumstances of primary caregivers and the children in their care.

<sup>3</sup> National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, at 94-116 (*IRS Earned Income Tax Credit Audits – A Challenge to Taxpayers*). Survey results showed that 26.5 percent of taxpayers did not understand their EITC claim was being audited.

<sup>4</sup> See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, at 114-144 (*Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*). TAS examined a small sample of cases where EITC was disallowed by the IRS because of a missing or incorrect TIN and had not been subsequently allowed. Our review of this sample showed that over 40 percent of these taxpayers appeared eligible for the credit based on IRS internal records.

<sup>5</sup> *Id.*

<sup>6</sup> In FY 2020, about 45 percent of taxpayers with total positive incomes under \$50,000 did not respond to the IRS audit of their individual income tax return. National Taxpayer Advocate 2020 Annual Report to Congress, at xiv. This rate includes taxpayers whose audit notices were undeliverable.

<sup>7</sup> National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, at 1-93 (*Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government: Improving Administration and Protecting Taxpayer Rights*).

Over 25 million EITC claims are made annually;<sup>8</sup> however, the current improper payment rate for EITC exceeds \$17 billion annually and over 25 percent of the EITC paid out by the IRS.<sup>9</sup> The documentation requirements for EITC are onerous and often EITC taxpayers may not be able to provide the documentation, if audited, even when eligible for the credit. Therefore, many eligible taxpayers may “fail” the audit and be denied the credit. While the tax law changes for 2018 modified the way the credit was indexed, the changes did not affect the fundamental structure of the credit or the definition of a qualifying child. This research project will focus on analyzing various worker and child credit scenarios that would allow lower income taxpayers with children to receive similar benefits as under the current EITC structure while also ensuring that other taxpayers would not receive a higher credit per child. It will also explore options to make it easier to verify eligibility requirements, reducing the need for extensive audits of EITC claims.

This project will explore the creation of two credits, which would provide similar economic support to low-income workers with children as the EITC but could be administered without the high improper payment rate. This study will analyze various formulas for replacing the EITC with a per-worker credit based on earned income and establishing a universal per-child benefit for low-income taxpayers.

**Objective 3 for FY 2022 – TAS will analyze tax return data, administrative EITC audit files, and census data to recommend a credit structure that is easier to administer while generating similar benefits to low-income families.**

- Activity 1: Identify possible options for a new earnings-based per-worker credit and per-child credit to replace the existing EITC credit.
- Activity 2: Compare the existing EITC to the credit amount afforded by possible new per-worker and per-child structures and the effect to taxpayers not currently eligible for EITC.
- Activity 3: Analyze the outcome of prior EITC audits if the rules for the proposed per-worker and per-child credit were in place.
- Activity 4: Explore IRS and Census Bureau data to quantify the number of children who would qualify their parents for a per-child tax credit under various definitions of a “qualifying child.”
- Activity 5: Estimate the new improper payment rate for EITC based on the rules for the proposed per-worker and per-child credit.

#### **4. STUDY PROCESSING ERRORS IDENTIFIED WITH FORMS 4029**

Taxpayers who are members of certain religious groups can qualify to be exempt from Social Security tax if recognized as being officially opposed to Social Security benefits.<sup>10</sup> To be eligible to receive this exemption, taxpayers must file a Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits, with the Social Security Administration (SSA). If the form is completed correctly, SSA will approve Form 4029, providing the taxpayer an exemption from Social Security taxes. SSA will forward the approved form to the IRS. IRS procedures require it to place a marker on the taxpayer’s entity record

8 IRS, About EITC, <https://www.eitc.irs.gov/eitc-central/about-eitc/about-eitc> (last visited May 25, 2021). The IRS estimates that the EITC program lifts 5.6 million children out of poverty. *Id.*

9 Treasury Inspector General for Tax Administration, Ref. No. 2020-40-025, *Improper Payment Reporting Has Improved; However, There Have Been No Significant Reductions to the Billions of Dollars of Improper Payments* 3 (Apr. 30, 2020).

10 IRC § 1402; Treas. Reg. § 1.1402(h)-1. SSA, Pub. No. 17-018, *How Religious Exemptions Work* (Jan. 2018), <https://www.ssa.gov/pubs/EN-17-018.pdf>.



indicating the approved Social Security tax exemption to prevent the IRS from assessing Social Security tax on reported income.

During FY 2021, TAS analyzed tax year 2018 accounts for taxpayers with approved Form 4029 exemptions. TAS compared those accounts with the accounts of taxpayers who were subsequently assessed Social Security tax on their earned income. These taxpayers did not report Social Security tax on their tax return, suggesting they believed that their exemption request had been approved.

Our initial analysis showed that most Form 4029 indicators were correctly placed on the 2018 tax return account; however, it also indicated that thousands of taxpayers' exemptions from Social Security tax were not recognized, or they were not recognized until after the IRS had already processed the tax return and assessed Social Security tax. TAS reviewed a small sample of those accounts where the Social Security tax exemption was not processed or processed after the IRS assessed the Social Security tax on the 2018 tax return. This small sample indicated that the IRS erroneously assessed Social Security tax on these returns, and in some cases, the taxpayer has never requested a refund of the additionally assessed taxes, even though the taxpayer has a valid 4029 exemption. Based upon our findings, during FY 2022, TAS will review a statistically valid random sample where the IRS assessed additional Social Security tax on tax returns with valid 4029 exemptions.

**Objective 4 for FY 2022 – TAS will determine causes of Form 4029 processing errors and work with the IRS to implement changes to its processing procedures. TAS will share the data and our research with the IRS for outreach endeavors to educate taxpayers on potential errors and best practices in filing Form 4029.**

- Activity 1: Study a statistically valid sample of tax year 2018 individual income tax returns with unrecognized Form 4029 exemptions to determine how often and why the IRS did not recognize the Social Security tax exemption or did not recognize the exemption until after it processed the return and assessed Social Security tax, and determine whether the IRS corrected its error.
- Activity 2: Recommend processing changes for individual income tax returns, which will prevent the IRS from erroneously assessing Social Security tax against taxpayers with approved Form 4029 exemptions.
- Activity 3: Advocate for the IRS to initiate procedures to refund or abate erroneous assessments of Social Security tax for Form 4029 taxpayers.
- Activity 4: Obtain data to assist TAS with outreach efforts to members of religious groups commonly filing Forms 4029 on how to improve the quality of these forms so the forms can be approved quickly by SSA and processed by the IRS prior to the processing of any tax returns for which the exemption should be applicable.

## IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2020 Annual Report to Congress

### INTRODUCTION

IRC § 7803(c)(2)(B)(ii) requires the National Taxpayer Advocate to submit an Annual Report to Congress that, among other things, contains recommendations for administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers. For 2020, the National Taxpayer Advocate proposed 73 administrative recommendations to the IRS and 13 legislative recommendations to Congress.<sup>1</sup>

By way of background, IRC § 7803(c)(3) provides that when the National Taxpayer Advocate submits recommendations to the Commissioner, “[t]he Commissioner shall establish procedures requiring a formal response ... within 3 months.” TAS submitted all administrative recommendations from the 2020 National Taxpayer Advocate’s report to the Commissioner shortly after publication. These included 73 administrative recommendations made in three sections of the report — the “most serious problems” (MSP) section, the “most litigated issues” (MLI) section, and the section containing the TAS research study. The Commissioner has provided written responses to these recommendations.

In this appendix, we present the problems, administrative recommendations, and responses in the following format:

- A problem statement for each MSP, some of the MLIs, and the TAS Research Study included in the 2020 Annual Report;
- A summary analysis of the problem;<sup>2</sup>
- The National Taxpayer Advocate’s recommendations to address the problem;
- The IRS’s narrative response;
- The National Taxpayer Advocate’s comments on the IRS’s narrative response; and
- A figure showing the IRS’s responses and actions relating to each recommendation, along with the National Taxpayer Advocate’s response.

TAS will provide quarterly updates on actions the IRS has agreed to implement. This information will be published on the TAS website.

1 See National Taxpayer Advocate 2020 Annual Report to Congress, <https://www.taxpayeradvocate.irs.gov/reports/2020-annual-report-to-congress/>.

2 See National Taxpayer Advocate 2020 Annual Report to Congress, *Executive Summary – Preface and Highlights*, [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_ExecSummary.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_ExecSummary.pdf).

**Most Serious Problem #1**

## **IRS RECRUITMENT, HIRING, AND EMPLOYEE RETENTION: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies**

**PROBLEM**

As the IRS faces the realities that come with an aging and shrinking workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to fairly and efficiently administer the tax laws while providing the best customer service to our nation's taxpayers. The IRS's success as an agency depends almost entirely on its workforce. Even with outdated technology and a shrinking budget, the IRS has continued to serve, relatively successfully, as the accounts receivable department for the U.S. government while also administering social programs and implementing congressional mandates. Unfortunately, the IRS has been unable to simultaneously fill and maintain its employee base, while also trying to replenish the losses incurred over the past decade.

**ANALYSIS**

The IRS has been facing human capital management issues for over a decade. According to IRS data, at the end of fiscal year (FY) 2020, of the 81,115 employees on payroll, 17,406 (approximately 21 percent of the IRS workforce) were eligible to retire, and that number rises to 20,767 (approximately 26 percent of the IRS workforce) when adding those who would be eligible to retire within the next year. Adding the average number of employees who leave the IRS each year for the private sector or another job (on average 5,576 employees), approximately 32 percent of IRS employees could leave over the next year. These figures are devastating and cannot be ignored. Something must change and change quickly.

The National Taxpayer Advocate is concerned that, due in part to insufficient staffing and hiring restrictions outside of its control, the IRS's Human Capital Office (HCO) is not equipped to handle the influx of hiring the IRS needs. While the Office of Personnel Management's (OPM's) End to End Hiring initiative goal of 80 days from identifying a need to fill a position to the day the selected candidate starts on the job was adopted by HCO, it continues to fall short as its actual hiring cycle time for FY 2020 was approximately 120 days, nearly 50 percent longer than its target goal for the year.

That National Taxpayer Advocate also believes that significant improvements are needed in the areas of recruitment and employee retention. Rather than simply posting a position and waiting for potential candidates to apply, the IRS should strengthen efforts to attract high-caliber students by utilizing external recruiters, career fairs, and networking with professional groups. Other potential recruitment strategies would include targeted ad campaigns and incentivized recruitment. The successes and best practices of other federal agencies and the private sector support these and other approaches. Regarding employee retention, having employee retention work focused at the corporate level does not seem to work, and the National Taxpayer Advocate believes that both recruitment efforts and employee retention efforts should be done primarily by

the individual IRS divisions with support from HCO, rather than having the majority of that work done at the corporate level.

## TAS RECOMMENDATIONS

- [1-1] Hire additional HR Specialists to meet hiring demand.
- [1-2] Restructure internal hiring processes to improve cycle times.
- [1-3] Renegotiate the hiring process with the NTEU to allow for up to 50 percent of all hiring announcements to be filled externally.
- [1-4] Provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages.
- [1-5] Allow the divisions to work their own announcements and hiring packages, when requested, while providing oversight, quality review, and technical support to ensure they follow the proper processes.
- [1-6] Conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector.
- [1-7] Invest more time, effort, and money and be more proactive in its recruitment efforts.
- [1-8] Rather than hiring out to contractors, bring background check staff back to the IRS as full-time employees.
- [1-9] Work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS IT, and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT.

## IRS NARRATIVE RESPONSE

We appreciate the importance of an engaged workforce to our success in fairly and efficiently administering the tax laws and service our nation's taxpayers. As the Advocate notes, recruiting and retention efforts can face significant hurdles. Despite these challenges, we have made major strides over the past two years to streamline hiring activities, enhance the collaboration between the Human Capital Office (HCO) and the IRS business operating divisions, strengthen external partnerships, and increase transparency in the hiring process.

Here are some of the ways we are streamlining hiring and improving recruitment and retention, which address many of the Advocate's concerns:

- In April 2019, the IRS HCO restructured the hiring process, more than doubling hiring production and eliminating the hiring request backlog. A key aspect of this success was the adoption of a hiring "workstation" concept, a best practice at other federal agencies, which aligns hiring activities across the three major phases of the hiring process. This model improves transparency, accountability, and efficiency while providing a solid foundation for career development and training of human resources (HR) professionals.

- A career development program (Career+) was implemented to assess the proficiency levels of the HR staff and support the development of training plans. This effort resulted in the implementation of an 8-week comprehensive training course for the HCO hiring staff.
- We assigned Business Account Managers (BAMs) to each business unit to serve as a single point of contact to provide personalized, dedicated, and comprehensive service throughout the hiring process.
- The IRS is implementing a new Servicewide Knowledge Management initiative, which will greatly improve the transfer of knowledge from seasoned employees to our newer hires.
- We are exploring ways to make the hiring process more agile through negotiations with NTEU on our National Agreement.
- In 2019, we engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector.
- Regarding recruitment, we recently reestablished our Recruitment Office, held enterprise-wide forums to share best practices, and increased our presence on social media and virtual platforms. Results of these efforts were shown in over 26,500 applicants and 700 recent graduate hires in the past seven months.

We recognize that we still have more work to do in the areas of recruitment, hiring, and retention; to that end, we appreciate the Advocate's recommendations to increase funding and expand flexibilities for these activities. We will continue to refine and improve our strategies in these areas and are committed to attracting and retaining the best and the brightest talent available.

## TAS COMMENTS ON IRS NARRATIVE RESPONSE

TAS acknowledges the efforts made by the IRS in some areas of hiring and recruitment. However, there is still room for improvement in supporting the IRS's hiring and recruitment needs now and into the future. The IRS's greatest resource is its employees, and it should do more to ensure the Service is adequately staffed. As the organization charged with carrying out hiring and recruitment, HCO is a service organization whose role is to meet the needs of the various business units and functions within the IRS. As such, HCO needs to ensure that it understands these needs and develops policies in line with them.

The IRS states it has streamlined hiring activities, enhanced collaboration between HCO and the IRS divisions, and increased transparency in the hiring process. However, when we spoke with HCO customers from across the IRS, their feedback indicated otherwise. Some of the main concerns raised involved time (to bring candidates onboard), and communication (or lack thereof) from HCO. While HCO has assigned Business Account Managers to each business unit to serve as a single point of contact, those outside of HCO have indicated that they often did not know whom to reach out to when they had a question or an issue with a hiring package. According to their customers, HCO has not done enough to streamline hiring activities, enhance collaboration with the divisions, and increase transparency in the hiring process — issues that are critical to address if the IRS is to make meaningful progress in recruiting and timely hiring qualified employees.

Regarding recruitment, the IRS states it has “engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector ...” However, we do not yet know the results of that assessment and how the IRS will use that assessment to improve recruitment efforts. While we are happy to see the IRS's success with 26,500 applicants and 700 recent graduate hires in the past

seven months, without further context, we do not know what these numbers show. How many applicants do we normally have in a similar seven-month period? How many of those applicants were already IRS employees? How many of those applicants were under the age of 30? How many of those recent graduates were already IRS employees?

We appreciate the IRS's acknowledgement that it still has work to do in the areas of recruitment, hiring, and retention. TAS will continue to advocate for the IRS's hiring and recruitment needs and push HCO to ensure it is meeting the needs of the entire IRS to better position the IRS to provide quality service and protect taxpayer rights.

TAS Recommendation	<b>[1-1] Hire additional HR Specialists to meet hiring demand.</b>
IRS Response	IRS agrees to implement TAS recommendation in full, contingent upon funding and hiring approvals.
IRS Action	We have prepared a staffing plan to hire 200+ hiring support positions.
TAS Response	It is encouraging that the IRS plans to implement this recommendation in full. TAS understands that HCO has begun implementing this recommendation and has announced approximately 40 of those positions as of April 2021.

TAS Recommendation	<b>[1-2] Restructure internal hiring processes to improve cycle times.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS has already implemented this recommendation. We restructured the hiring process, more than doubling hiring production and eliminating the hiring request backlog. A key aspect of this success was the adoption of a hiring "workstation" concept, a best practice at other federal agencies, which aligns hiring activities across the three major phases of the hiring process. This model improves transparency, accountability, and efficiency while providing a solid foundation for career development and training of human resources (HR) professionals. A career development program (Career+) was also implemented to assess the proficiency levels of the HR staff and support the development of training plans. This effort resulted in the implementation of an 8-week comprehensive training course for the hiring staff. The IRS implemented the transition to USAStaffing as the new hiring platform to align with technology available and widely used across the federal government, which will increase efficiencies in the hiring process and further improve cycle times.

## Appendix 1: IRS Responses to Administrative Recommendations

TAS Response	TAS disagrees with this response. TAS would not have made a recommendation if we thought this issue had been corrected. Yes, hiring processes were restructured, but there is no tangible correlated success with the new processes as cycle times were still 150 percent of HCO's goal at the time of the report. Further, as several subject matter experts from the various BODs indicated in our discussions, they do not believe that the "workstation" concept is more efficient. Rather, they indicated that it has been very frustrating for them and does not appear to be working as well as the prior system.
TAS Recommendation	<b>[1-3] Renegotiate the hiring process with the NTEU to allow for up to 50 percent of all hiring announcements to be filled externally.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS is exploring opportunities to make the hiring process more agile through National Agreement negotiations and, while the agency will propose ways to streamline the process, those processes are subject to negotiation with NTEU. The IRS agrees to review opportunities to expand external hiring and has already identified hiring activities as a top priority for fiscal year 2021 negotiations. Negotiations, mediation, and fact-finding are set to end in August 2021. However, if either party requests assistance from the Federal Service Impasses Panel, the process may not end until August 2022.
TAS Response	It is encouraging that the IRS agrees to implement this recommendation in part, and TAS stands ready to assist with these efforts where we can. We will continue to advocate for the IRS on these fronts, as the issues are important and need to be meaningfully and quickly addressed.
TAS Recommendation	<b>[1-4] Provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	This recommendation has been implemented. The Human Capital Office (HCO) assigned Business Account Managers to each business unit to serve as a single point of contact to provide personalized, dedicated, and comprehensive service throughout the hiring process.



## Appendix 1: IRS Responses to Administrative Recommendations

TAS Response	TAS understands that HCO believes the BAMs suffice for a single point of contact for BODs. However, several of our BOD contacts noted issues in their experience with the BAMs. The issues noted primarily involved the concern that the BAMs were often unable to answer simple questions about a specific hiring package, and it could take days to get a response to a question. Not having a single point of contact who can quickly answer specific questions on hiring packages is problematic for the BODs, and it causes greater inefficiencies for HCO. Further, it has downstream effects on candidates applying for positions. This needs to be addressed so that the process is more efficient for all parties involved.
TAS Recommendation	<b>[1-5] Allow the divisions to work their own announcements and hiring packages, when requested, while providing oversight, quality review, and technical support to ensure they follow the proper processes.</b>
IRS Response	IRS does not agree to implement TAS recommendation. The business units and the Human Capital Office (HCO) share responsibility for planning and execution of the IRS hiring process, and we believe the current model is effective and efficient. HCO is committed to partnering with the business units to continue to refine hiring activities. Monthly meetings are scheduled between the business units and HCO's Business Account Managers to address concerns and facilitate ongoing improvements.
IRS Action	N/A
TAS Response	While TAS has noticed some improvements in its hiring processes, it is discouraging that HCO is not willing to accept assistance from the BODs in this area. With the potential for a ten percent increase to IRS funding in FY 2022, there will likely be a significant wave of IRS hiring on the horizon. TAS has concerns that HCO is not ready to deal with the influx of hiring activity. We don't believe HCO should discount the BODs' offer of assistance with hiring. Many of the staff in these organizations came from HCO and receive the same training as the HCO staff. The monthly meetings with the BAMs have been helpful in addressing some issues, but having the BAMs serve as a conduit to address questions related to hiring packages throughout the various workstation phases further slows the process. While HCO believes that the current model is effective and efficient, it is clear from reviewing the cycle times and visiting with subject matter experts from impacted BODs that there is significant room for improvement.
TAS Recommendation	<b>[1-6] Conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.

## Appendix 1: IRS Responses to Administrative Recommendations

IRS Action	<p>We have already implemented this recommendation. The IRS engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector. As a result, the IRS reestablished a Recruitment Team within the Strategic Talent Analytics &amp; Recruitment Solutions (STARS) Office, implemented quarterly enterprise-wide forums to share best practices, and increased our presence on social media and virtual platforms. Results of these efforts were shown when we launched a new IRS Forward program for recent graduates, which resulted in over 26,900 applicants and 900 recent graduate hires in from June 2019 to January 2021 solely from this program. Of these, 291 were under the age of 30 and an additional 195 were between ages 30-39. Ninety percent of the recent graduate hires were hired from external announcements.</p>
TAS Response	<p>It is hard to come to any conclusions regarding this data without additional context. We are happy that the IRS has realized some success with its new targeted program for recent graduates. While 26,900 applicants and 900 recent graduate hires over the course of a year and a half sounds great, without further context, we do not know what these numbers demonstrate.</p>
TAS Recommendation	<p><b>[1-7] Invest more time, effort, and money and be more proactive in its recruitment efforts.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in full, contingent on funding.</p>
IRS Action	<p>Funding dependent, the IRS will increase recruitment staffing and spending to expand on the current recruitment portfolio which includes developing advertising collateral (videos, gifs., recruitment flyers, images, and communication), maintaining a social media presence, using nationally recognized virtual job boards, developing and maintaining relationships with schools, and participating at in-person and virtual career fairs.</p>
TAS Response	<p>It is encouraging that the IRS agrees to implement this recommendation in full. We are optimistic that the funding received is sufficient to expand the IRS's recruitment efforts significantly.</p>
TAS Recommendation	<p><b>[1-8] Rather than hiring out to contractors, bring background check staff back to the IRS as full-time employees.</b></p>

## Appendix 1: IRS Responses to Administrative Recommendations

IRS Response	IRS does not agree to implement TAS recommendation. The IRS ceased conducting its own background investigations in 2019 because aging investigation cycle times were negatively impacting the ability of the Service to meet its hiring needs and increasing exposure to risk. We added a prescreen process instead to allow employees to onboard with certain checks shortly after selection and investigations were outsourced. The authority to conduct IRS background investigations is with the Defense Counterintelligence and Security Agency (DCSA), which conducts approximately 97 percent of all federal background investigations across government. It would be cost-prohibitive to stand up an IRS background investigation team (which would require staffing, training, travel, technology, and contracts) and it would be counter-productive in driving increased agility, efficiency, effectiveness, and security as directed by the IRS Strategic Plan.
IRS Action	N/A
TAS Response	TAS understands HCO's response. However, subject matter experts from several BODs noted issues with background investigations. If there are things that HCO or the IRS can do to further improve the way these are worked for the IRS, it would be beneficial for all parties involved.

TAS Recommendation	<b>[1-9] Work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS IT, and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>(1) We will seek additional approval for direct-hire authority for critical positions. The IRS has prepared a request for direct-hire authority for filing season positions and routed it through the appropriate channels for approval and submission to the Office of Personnel Management.</p> <p>(2) We will consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT. The Human Capital Office will partner with Legislative Affairs to discuss legislative changes that would allow the IRS to expand the Streamlined Critical Pay Authority beyond IT-related positions where a level of expertise and knowledge exceeds those that exist in the IRS and federal government.</p>
TAS Response	It is encouraging that the IRS agrees to implement this recommendation in full. We are encouraged that HCO will be able to get some traction in these areas, as it would be beneficial to the IRS as a whole.

**Most Serious Problem #2****TELEPHONE AND IN-PERSON SERVICE: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing****PROBLEM**

The ability to speak to an IRS employee over the phone or in person and receive quality service is critical to meeting taxpayer needs. However, the current budget requested by the IRS and approved by Congress targets level of service (LOS) measurements for fiscal year (FY) 2021 at 60 percent, which means that four out of every ten taxpayers calling the IRS cannot get through to a customer service representative (CSR). Additionally, there were 401 Taxpayer Assistance Centers (TACs) in 2011, and now only 358. With the enactment of the Taxpayer First Act (TFA), the IRS can pursue novel approaches to improve customer service via an omnichannel approach, however, it lacks sufficient resources. Problems with IRS customer service were exacerbated during the COVID-19 pandemic. For example, nearly all free tax preparation sites for elderly and low-income taxpayers closed, resulting in a nearly 30 percent drop in free returns filed compared to last year.

**ANALYSIS**

The IRS uses innovative technology on a limited basis but needs more funding to expand. For example, customer callback technology lets taxpayers choose between waiting on the line or receiving a call back when an assistor is available. The IRS estimates that using the callback feature saved 50,973 hours on hold in January 2020. To address long wait times, the IRS launched a text chat pilot in 2017, with an average wait time of 35 seconds in FY 2020. In early 2021 the IRS will be introducing a “natural language” pilot, which allows interaction with the taxpayer by having the phone system ask an open-ended question and wait for a response.

TACs are unique because they provide a wide range of key IRS services with a physical presence in local communities where resources and support are lacking. TACs use Virtual Service Delivery, which provides video conferencing technology to assist taxpayers at IRS partner sites. The IRS is shifting to video conferencing technology that allows taxpayers to attend a virtual appointment from any computer, tablet, or mobile phone. Videoconferencing technology could fill voids in TAC services or provide service in remote areas.

**TAS RECOMMENDATIONS**

- [2-1]** Prioritize expanding customer callback technology to relieve taxpayers of the frustration associated with long hold times and low levels of service.
- [2-2]** Provide taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS’s use of this technology was restricted during the initial months of the pandemic due to limited bandwidth, which the IRS must address as it further incorporates this technology into its operations.

- [2-3] Continue to explore alternative telephonic support by developing an automated telephone tool designed to complete specific software-based tasks and/or voice chatbot. Either system could handle routine questions or tasks which would free up CSRs for those individuals who have more complex issues or have a need to speak with a human.
- [2-4] Continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the VITA and TCE programs.
- [2-5] Ensure meaningful performance measures for existing and/or newly emerging telephone, online, and in-person assistance methods to objectively measure customer service.
- [2-6] Provide dedicated multiyear funding to increase the “Level of Service” on both the IRS’s Accounts Management and Compliance telephone lines to 80 percent, with average hold times not to exceed five minutes. The IRS needs congressional support to continue and maintain upgrades allowing the IRS to make new investments in staffing, training, and improved telecommunications technology.

## IRS NARRATIVE RESPONSE

The IRS is continually working to improve service delivery to taxpayers who have questions or need assistance. All face-to-face and toll-free customer service was suspended in late March 2020, in response to state and local shelter-in-place orders due to the COVID-19 pandemic. The IRS immediately began developing plans to safely return to business and re-establish in-person and telephone services including the rapid enabling of employees to telework.

The IRS began reopening toll-free telephone lines on April 13, 2020, with the major toll-free telephone lines open by June. For example, after reopening, the Automated Collection System (ACS) level of service (LOS) was 58.7%, with an average wait time of 15 minutes. By the end of September, nearly 11,000 telework and in-office Customer Service Representatives (CSR) were answering calls and/or working priority paper inventory. The IRS was able to deliver a fiscal year (FY) 2020 CSR LOS of 53.1% (53.5% for the extended filing season) and end the FY with a paper inventory of comparable to previous years, plus any correspondence mail yet to be opened. The CSR LOS is dependent on the level of funding available for staffing resources to address telephone demand for assistors. The IRS has a full suite of measures and metrics used to evaluate services available for taxpayers online, in-person, on the telephone, and related to paper processing.

The IRS quickly deployed a dedicated Economic Impact Payment (EIP) toll-free line, to provide informational recordings, on April 11, 2020. In mid-May, the IRS staffed the line with vendor-provided assistors to answer non-account EIP-related questions. The EIP line included Over-the-Phone Interpreter service to allow for assistance in multiple languages. Through the end of July, this line had handled over 1.9 million calls. The IRS also assisted with answering over 185,000 FEMA calls with a 99.6% LOS in the wake of several hurricanes that hit the country during 2020.

Taxpayer Assistance Centers (TAC) began a return to limited, appointment-only, service in late June. In FY 2020, we provided face-to-face assistance to more than a million taxpayers, including almost 80,000 taxpayers without appointments. We continue to resolve many potential visits through the TAC toll-free appointment service line. The IRS plans to relaunch a pilot in early FY 2021 of the Web Service Delivery to assess our capability to provide face-to-face service to taxpayers via a virtual connection.

The IRS continues to develop technology improvements. Text chat has expanded to 11 of the 19 ACS call sites (including bilingual sites), and now allows taxpayers to attach documents such as installment agreement forms and delinquent returns. The IRS plans to expand customer callback from five to 16 toll-free applications in FY 2021, with future expansions planned subject to available funding. The IRS is exploring natural language capabilities on the EIP line to allow callers to self-route to get help with queries.

To mitigate the pandemic impact, most training for customer service focused employees is being conducted virtually. The IRS developed a strategy for VITA/TCE partners to provide virtual assistance where needed, increased hiring to reduce the number of unstaffed TACs to the lowest level since 2017 and is equipping more employees with new laptops for in-office and remote work.

## TAS COMMENTS ON IRS NARRATIVE RESPONSE

TAS acknowledges the efforts made by the IRS to restore taxpayer services after the state and local shelter-in-place orders across the country took effect. The IRS navigated a process of enabling employees to telework. The IRS also continued working on implementing new technology, such as the callback feature, which has proven to be a success for the IRS and taxpayers. It ensured training was available in the new virtual environment.

However, even before the pandemic, the IRS requested funding levels that only allow for a 60 percent LOS. This did not allow for top quality customer service. The pandemic only exacerbated existing problems. TAS identified weak spots brought on by the pandemic, such as an inability to obtain tax preparation services through VITA or TCE. To offer the best service possible to taxpayers and to fulfill the IRS's plan to create a concierge system for taxpayers, the IRS must receive dedicated multiyear funding. This funding should prioritize callback technology and videoconferencing technology, both services that benefit taxpayers. Last, the IRS must consider metrics such as first contact resolution when it makes its decisions for allocating resources for taxpayer service.

TAS Recommendation	<b>[2-1] Prioritize expanding customer callback technology to relieve taxpayers of the frustration associated with long hold times and low levels of service.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS agrees expanding customer callback technology on the toll-free telephone lines will relieve taxpayer burden of waiting in a live queue for an available customer service representative and can also help improve the level of service by reducing call abandons and retries. In FY 2019, the IRS began a multi-year, phased initiative to deploy customer callback technology as part of the IRS Modernization Plan by piloting customer callback technology on one telephone line. The IRS expanded the technology to five telephone lines in FY 2019 and to sixteen telephone lines in FY 2021 to offer the service to more taxpayers. The IRS is also upgrading the call center infrastructure as part of the overall strategy to expand the customer callback option and, based upon available funding, reach our goal of an optimal use of the technology by the end of FY 2024.

## Appendix 1: IRS Responses to Administrative Recommendations

TAS Response	It is encouraging that the IRS has agreed to implement our recommendation. We look forward to working with the IRS as it expands customer callback technology.
TAS Recommendation	<b>[2-2] Provide taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS's use of this technology was restricted during the initial months of the pandemic due to limited bandwidth, which the IRS must address as it further incorporates this technology into its operations.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS plans to implement the recommendation of using face-to-face services as widely as possible, based upon available funding and other considerations. The recent IRS report to Congress on the Taxpayer First Act aligns with this recommendation in envisioning a seamless taxpayer experience, including integration of digital, telephone, and face-to-face channels. If additional resources are made available and security requirements to protect taxpayer data can be met, we will be able to implement this important vision.
TAS Response	We appreciate the IRS's agreement and understand that funding limitations will impact the ability to meet this recommendation. Videoconference technology will play an important role in providing a seamless taxpayer experience. Pursuing this option as a priority will benefit the taxpayer experience through improved quality service.
TAS Recommendation	<b>[2-3] Continue to explore alternative telephonic support by developing an automated telephone tool designed to complete specific software-based tasks and/or voice chatbot. Either system could handle routine questions or tasks which would free up CSRs for those individuals who have more complex issues or have a need to speak with a human.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.



IRS Action	<p>The IRS agrees alternative telephone support utilizing self-service automated responses to frequently asked questions (FAQs) is desirable to free up customer service representatives for more complex issues. For example, the IRS has already developed several self-service tools to assist with the extremely high telephone demand associated with Economic Impact Payments (EIPs), including an Economic Impact Payment Center webpage<sup>3</sup> with FAQs and the capability for taxpayers who establish an account on IRS.gov/account<sup>4</sup> to view the amount of the EIP they received when preparing their 2020 return so they can reconcile any EIP received with the allowable amount.</p> <p>The IRS has also been exploring natural language technology to help address the high EIP telephone traffic by utilizing intelligent automation to understand the caller's request and provide responses from a database of approved responses. We have also been working on a conversational artificial intelligence voice and chat bot that will address routine collection issues through self-help options.</p>
TAS Response	<p>It is encouraging that the IRS has agreed to implement our recommendation. We look forward to learning about progress made in this area and working with the IRS in implementing the alternative telephone support.</p>
TAS Recommendation	<p><b>[2-4] Continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the VITA and TCE programs.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in full.</p>
IRS Action	<p>The IRS has implemented a strategy to ensure that all available videoconferencing platforms, including virtual assistance, are available for partner use to deliver critical tax preparation services to taxpayers while balancing the security of taxpayer information during the 2021 filing season and beyond.</p> <p>For example, the IRS conducted overseas military VITA training virtually for the 2021 filing season using two web-based platforms, ZoomGov and WebEx. Use of the videoconferencing technologies allowed 17 instructors to provide training to 16 military bases located in Europe and Asia. In comparison, five instructors traveled overseas to conduct training at 10 military bases for the 2020 filing season. Not only was the IRS able to deliver the training to more sites using the virtual platforms, we were able to save approximately \$45,000 in travel costs. Using these platforms allowed instructors to share presentations, and both instructors and students were able to share their screens to show inputs for mock scenarios within the simulated VITA/TCE learning environment in the TaxSlayer Practice Lab.</p> <p>The IRS also developed a new Publication 5450, <i>2021 VITA/TCE Site Operations</i> for partners and volunteers that provides guidance to face-to-face partners for alternative strategies for preparing tax returns virtually to support taxpayers in filing their returns on time.<sup>5</sup> Publication 5450 also provides guidance for partners to highlight the availability of videoconferencing in their Virtual VITA/TCE Plan (Form 15273) and Virtual VITA/TCE Taxpayer Consent Form (Form 14446).</p>
TAS Response	<p>It is encouraging that the IRS has agreed to implement our recommendation. We stand ready to work with the IRS in expanding accessibility for taxpayers and raising awareness about availability at VITA and TCE partner sites.</p>

3 See IRS Economic Impact Payment Information Center, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center>.

4 See IRS Online Account, View Your Account Information, <https://www.irs.gov/payments/view-your-tax-account>.

5 See, Publication 5450, 2021 VITA/TCE Site Operations, <http://core.publish.no.irs.gov/pubs/pdf/p5450--2020-12-00.pdf>.

TAS Recommendation	<b>[2-5] Ensure meaningful performance measures for existing and/or newly emerging telephone, online, and in-person assistance methods to objectively measure customer service.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>The IRS uses a suite of performance, quality, and feedback measures that are presented in a multi-channel performance dashboard that includes historical performance, current year performance, and planned performance. These measures include elements such as wait times, level of service, and accuracy for toll-free and face-to-face services.</p> <p>The IRS is implementing the Taxpayer First Act (TFA), which calls for transformational changes in the way the IRS serves its stakeholders and performs its operations. While the IRS continues to modernize its websites and services, it does so in the service of these larger strategic initiatives. The IRS also collaborates with other agencies, such as the Social Security Administration and Department of Education, and with industry, including tax preparers, our Security Summit partners, and financial institutions, where customer experience journeys overlap. The approach for most new TFA measures is to develop and test the measure in FY 2021, create a baseline standard to serve as a comparison or control in FY 2022, and set the target for FY 2023. The customer experience measures developed for the taxpayer experience strategy will report on a suite of cross-functional experience measures.</p>
TAS Response	It is encouraging to see agreement in ensuring meaningful performance measures in this area. Meaningful, objective measurements will ensure that the IRS is improving the taxpayer experience.

TAS Recommendation	<b>[2-6] Provide dedicated multiyear funding to increase the “Level of Service” on both the IRS’s Accounts Management and Compliance telephone lines to 80 percent, with average hold times not to exceed five minutes. The IRS needs congressional support to continue and maintain upgrades allowing the IRS to make new investments in staffing, training, and improved telecommunications technology.</b>
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

**Most Serious Problem #3**

## **ONLINE RECORDS ACCESS: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration**

**PROBLEM**

To provide top quality service, as measured through the eyes of the taxpayers, the IRS must improve its online access to taxpayer records. Due to limited technology systems, the IRS operates under a largely paper-based system, requiring taxpayers to keep copies of paper correspondence, call the IRS and deal with the toll-free line challenges, or use a patchwork of electronic online applications to gather necessary information to meet their tax obligations. This system leads to inefficiencies and causes unnecessary burdens as taxpayers cannot access essential information, resulting in delays and dissatisfaction.

**ANALYSIS**

Taxpayers have no consolidated place to view all their information online. The current Online Account only contains limited information and does not incorporate all the other IRS online applications. As the IRS continues to steer taxpayers towards the internet, taxpayers face limitations in what they can accomplish online. For example, only taxpayers with debts below a certain threshold can use the Online Payment Agreement, and taxpayers seeking an installment agreement outside of the IRS's streamline criteria must mail or fax in their forms. Currently only six notices are available in the Online Account, with another five planned for 2021. Of the notices chosen, most are purely informational notices about adjustments or other past actions. Several Online Account features are currently not planned, and we would recommend the IRS consider robustly building up the tool, such as including the ability to view images of past tax returns or to file documents and request actions such as an Appeals conference, or the other features listed below. The COVID-19 pandemic highlighted the urgent need for a robust Online Account. This spring when the IRS shut down its printing sites, it accumulated a backlog of approximately 31.2 million notices that were digitally created but unable to be mailed for an extended period of time. Additionally, in November, the IRS amassed a second backlog of about 11 million notices that could not be timely mailed, which is not discussed in the Most Serious Problem because this backlog arose subsequent to the writing of this report. An Online Account would have allowed the IRS to electronically post the notices and alert taxpayers to provide timely information and help mitigate confusion from the late notices.

**TAS RECOMMENDATIONS**

- [3-1] Provide business taxpayers access to an online account similar to the IRS's Online Account that is available to individual taxpayers.
- [3-2] Prioritize posting to the Online Account notices that provide the taxpayer with key statutory or administrative rights, a deadline for action, or notice of a potential intrusive enforcement action, such as levy.

- [3-3] Develop a timeline for when all remaining notices used by the IRS, outside the 11 notices already scheduled, will be available to be viewed within taxpayers' Online Accounts.
- [3-4] Provide access to all self-assistance online applications through the Online Account.
- [3-5] Update and consolidate Online Account information to reflect information from all other IRS online applications.
- [3-6] Integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents to and from the IRS within their Online Accounts.
- [3-7] Place taxpayer-specific alert banners on the main dashboard of taxpayers' Online Accounts to provide information regarding their status of their cases and highlight important deadlines, such as the due date for providing documentation in an examination, the assignment of a balance due case to a Revenue Officer, or the deadline to request a CDP hearing.
- [3-8] Allow taxpayers to add, change, or remove authorized representatives through the Online Account.
- [3-9] Allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years.
- [3-10] Allow taxpayers to update their address and other contact information through the Online Account.
- [3-11] Allow taxpayers to make certain requests and file certain forms through the Online Account, such as a CDP request, a penalty abatement request, or a tentative carryback application for refund where e-file is not otherwise available.
- [3-12] Continue to fund the technological upgrades the IRS requires to provide an enhanced level of service that the country deserves to improve its overall operations.
- [3-13] Provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960s technology systems, create an integrated case management system, and offer robust online accounts for taxpayers and practitioners.

## IRS NARRATIVE RESPONSE

We agree with the National Taxpayer Advocate on the need for robust online services as one part of our omni-channel approach to customer service consisting of internet capabilities, correspondence, telephone, and face-to-face interactions. We have focused for several years now on prioritizing, building and delivering the services that are most needed, while also considering feasibility given significant resource and technology constraints. The IRS systematically reviews taxpayer and stakeholder feedback, market research, and strategic priorities to inform our product prioritization and development.

Since launching Online Account for individual taxpayers in 2016, the IRS has added many new features using an agile development process with releases approximately every nine weeks. The IRS has a long list of ideas and must continuously prioritize which features to work on with the available capacity, taking into consideration the taxpayer and business benefit and the level of effort. The team has prioritized features that don't otherwise exist online, or where there were opportunities for significant user experience improvements. Current features available to individual taxpayers via their Online Account include personalized messaging on the home page with reminders to file, lien or levy status, payment plan details and status, and any pending

payments. Additionally, in November we added a Message Center where taxpayers can view and download digital copies of six high priority notices. These notices cover 23% of the notice volume sent by the IRS, totaling more than 26 million notices, and taxpayers can view through Online Account any of these notices issued since November 15, 2020. In January we plan to display a taxpayer's Economic Impact Payment amount in Online Account, providing a digital way to look this up when filing 2020 tax returns for taxpayers who have misplaced or have not received the related notices and need to claim additional amounts.

In accordance with the Taxpayer First Act (TFA), the IRS recently developed a 10-year strategy for improving the taxpayer experience. This strategy will help drive prioritization and decision making going forward. The TFA Taxpayer Experience Strategy includes plans to further expand on existing Online Account features and add new ones. However, any future expansion or acceleration would be dependent on receipt of funding.

In Fiscal Year (FY) 2021, the IRS plans to add additional notices, show the taxpayer's address on file, enable taxpayers to sign tax professional authorizations, and offer the option to create a short-term payment plan in Online Account. In partnership with the Bureau of the Fiscal Service, the IRS plans to enable taxpayers in FY 2022 to make payments through Online Account, allowing taxpayers to view their balance and pay it in a single session online without having to reenter information, better enabling voluntary compliance and improving the user experience. In FYs 2022-2024, the IRS plans to add the option to update contact information, allow opt-in and -out of paper notices, allow access to secure messaging in Online Account, and add additional features for tax professionals.

We appreciate the National Taxpayer Advocate's support for additional and consistent funding for digital modernization and the National Taxpayer Advocate's recognition of the positive steps the IRS has taken to expand online services for taxpayers. The IRS is committed to high-quality, seamless experience — through expanded digital service options as well as through improved traditional channels — in order to help resolve diverse taxpayer needs and promote voluntary tax compliance.

## **TAS COMMENTS ON IRS NARRATIVE RESPONSE**

TAS appreciates that the IRS is forward-thinking in regard to providing taxpayers comprehensive access to their online records through the Online Account and other applications. As discussed in the Most Serious Problem and the IRS response, there are many future features the IRS is planning that will greatly benefit taxpayers. Providing business taxpayers with the same access to online records as individual taxpayers will be critical to ensuring all taxpayers can easily access the information they need to comply with their tax obligations.

Throughout the Most Serious Problem, we illustrate problems with relying on a piecemeal system of online applications, where taxpayers must use one application to find some information and then another application to find additional information or take an action. The IRS has made some progress in integrating applications. The IRS's future plans to allow taxpayers to view a balance and pay it in a single session will encourage taxpayer compliance and reduce taxpayer frustration. Another step forward is the plan to make information regarding Economic Impact Payments available in the Online Account starting in early 2021. However, the IRS has not committed to integrating all its taxpayer-facing online applications into the Online Account. This step is key to making access to online records simpler for taxpayers. Although the IRS states that it is

prioritizing features that do not otherwise exist online, it should also make adjustments to existing features so they are easier to use and integrated in one place.

The Most Serious Problem discusses the downfalls of relying primarily on transcripts to inform taxpayers about their accounts. As explained, the transcript can be confusing to taxpayers, who cannot easily ascertain from the transcript when a return was filed or when a refund was issued. Additionally, the transcript lacks key information shown on a taxpayer's return, such as the dependents claimed for certain tax benefits. The IRS has not committed to posting actual copies of returns within the Online Account, and we hope this is something it will reconsider in the near future.

TAS is pleased to learn the IRS has already begun posting notices in the Online Account, starting with the six notices that were part of a November 2020 update. The IRS indicates that the notices chosen represent a significant portion of all notices the IRS sends. While it is positive that the IRS is focusing on posting high-volume taxpayer notices in the Online Account, TAS believes the IRS should not only consider volume but also the impact on taxpayer rights when it chooses which notices to include next. Many of the notices included or planned are primarily informational notices. Missing from the list of notices currently available or planned for FY 2021 are some key taxpayer notices such as the statutory notice of deficiency, which provides a taxpayer's only opportunity to challenge a liability in court prior to paying it; the CDP notice, which offers the taxpayer a deadline to request a hearing before the IRS Independent Office of Appeals; and the refund disallowance notice, which sets a two-year deadline to challenge a refund disallowance. TAS encourages the IRS to develop a prioritization plan for posting notices that considers the impact on taxpayer rights as well as volume.

The IRS must accelerate its timeframe for posting additional notices in the Online Account. The 31.2 million notices created during mid-2020 that could not be mailed on time due to the COVID-19 pandemic demonstrate how it is crucial for taxpayers to have access to their notices online. As taxpayers are grappling to understand the impact of the late-mailed or purged notices and what it means for their account balances and due dates, the IRS can leverage the Online Account to provide information. For example, even if a taxpayer lost a copy of his or her refund disallowance notice, and this notice is not yet included in the Online Account, the IRS could use personalized messaging to provide an alert to the taxpayer regarding when his or her deadlines expire for administratively appealing the disallowance or challenging it in court. The Most Serious Problem gives examples of other personalized status updates.

Overall, the IRS has made great strides toward providing more taxpayer information online. TAS understands that funding will continue to dictate when and what improvements the IRS can make to online services. Notwithstanding this restriction, TAS believes the following recommendations will help the IRS prioritize changes that will make it simpler for taxpayers to access their tax information online and will promote taxpayer rights.

TAS Recommendation	<b>[3-1] Provide business taxpayers access to an online account similar to the IRS's Online Account that is available to individual taxpayers.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The Taxpayer Experience Strategy as laid out in the recent Taxpayer First Act Report to Congress outlines the IRS's commitment to expanding digital services to businesses as one of its six key areas of focus. The IRS is committed to expanding the secure online accounts currently available for individual taxpayers and making similar online accounts available for businesses and tax professionals. Subject to funding limitations and other resource constraints, the IRS anticipates beginning to conduct taxpayer research in FY 2021, with authorization work and design to begin in subsequent years, again, subject to funding.
TAS Response	TAS is pleased the IRS is moving forward with the actions necessary to provide Online Account services to business taxpayers. Because these taxpayers have similar needs to individual taxpayers when it comes to accessing information and conducting their business with the IRS online, the IRS should prioritize and expedite these efforts.

TAS Recommendation	<b>[3-2] Prioritize posting to the Online Account notices that provide the taxpayer with key statutory or administrative rights, a deadline for action, or notice of a potential intrusive enforcement action, such as levy.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The Taxpayer Experience Strategy as laid out in the recent Taxpayer First Act Report to Congress outlines the IRS's commitment to expanding digital services, including the delivery of notices. Subject to funding constraints, the IRS will seek to prioritize conversion of notices and will incorporate the criteria recommended by TAS into the prioritization as possible given other resource demands.
TAS Response	Although there are both funding and technological barriers to placing certain notices in the Online Account, TAS is looking forward to working with the IRS to identify some of the most fundamental notices in terms of taxpayer rights and prioritize these for posting. Even if there are some statutory notices and other notices with deadlines that cannot be posted at this time, TAS expects to target notices that will help taxpayers exercise their rights and meet important deadlines.



TAS Recommendation	<b>[3-3] Develop a timeline for when all remaining notices used by the IRS, outside the 11 notices already scheduled, will be available to be viewed within taxpayers' Online Accounts.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS intends to convert as many of the remaining notices to a digital format as possible given funding levels and other resource demands. Consistent with the 21st Century Integrated Digital Experience Act (IDEA) legislation, the IRS plans to conduct research to gain insights into taxpayer needs that will inform a more robust prioritization plan for digital notice delivery. Given uncertain resources, legislative demands, and potential changes to the inventory of notices utilized for tax administration, the IRS cannot commit to a timeline for all remaining notices at this time.
TAS Response	The IRS should work toward prioritizing its goal of placing all taxpayer notices in the Online Account, similar to the California Franchise Tax Board. Including only some notices online may confuse taxpayers, causing them to miss paper notices in the mail that are not in the Online Account. Although funding may dictate the timeline, the IRS should be making plans to place all notices online.

TAS Recommendation	<b>[3-4] Provide access to all self-assistance online applications through the Online Account.</b>
IRS Response	IRS does not agree to implement TAS recommendation. Not all existing self-assistance online applications require the same level of registration or authentication that is necessary to gain access to the individual Online Account. Preserving access to the greatest number of taxpayers is a key IRS consideration in determining which tools should be incorporated into a robust account experience. It would be unnecessarily burdensome for taxpayers to satisfy a higher level of authentication to access all our applications. The integration of existing features within a consolidated account must also be balanced against our ability to develop new features that will improve the taxpayer experience.
IRS Action	N/A
TAS Response	TAS's recommendation is not to remove all freestanding IRS online applications and make them only available in the Online Account. Instead, the recommendation asks the IRS to make them <i>also</i> available within the Online Account, so taxpayers can have a one-stop shop for all their IRS needs. Certainly, we agree with the IRS that requiring additional authentication where it is not needed would burden taxpayers.

TAS Recommendation	<b>[3-5] Update and consolidate Online Account information to reflect information from all other IRS online applications.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS has a growing list of taxpayer needs to prioritize based on funding. The IRS agrees with the need for a migration plan for qualified existing self-service applications to a consolidated account experience where incorporating them will improve the taxpayer experience. However, funding limitations necessitate such a migration plan to be prioritized against the need to build new services that do not otherwise exist online. If funded, IRS agrees that consolidation of features would improve the taxpayer experience. However, the IRS does not agree that <i>all</i> self-assistance online applications should be accessed through Online Account. For example, today the Tax Withholding Estimator is accessible to anyone and does not require registration. Imposing registration requirements will limit the number of taxpayers able to access this self-assistance tool. Conversely, if the same functionality can be used without such protections, rebuilding the service behind such protections could be duplicative and reduce the pace at which other services can be brought online.
TAS Response	The recommendation is not asking for the applications themselves to be available within the Online Account (although the previous recommendation does ask for this), but instead for valuable taxpayer-specific data to be incorporated. For example, the information about when a refund is sent to the specific taxpayer should be incorporated into the Online Account so the taxpayer does not have to view a transcript that may not yet reflect this information. The IRS already made progress in this area earlier this year by placing Economic Impact Payment information within the Online Account, which was previously only available through the freestanding application.

TAS Recommendation	<b>[3-6] Integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents to and from the IRS within their Online Accounts.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS plans to integrate access to secure messaging in Online Account in FY 2023; however, this is not currently funded.
TAS Response	While TAS acknowledges the funding restrictions, placing secure messaging within the Online Account should be prioritized. Allowing taxpayers to view a notice, ask questions, send documents, and make requests, all within a single visit to the Online Account, should encourage taxpayer participation in the tax system and expedite the exam and collection processes.

TAS Recommendation	<b>[3-7] Place taxpayer-specific alert banners on the main dashboard of taxpayers' Online Accounts to provide information regarding their status of their cases and highlight important deadlines, such as the due date for providing documentation in an examination, the assignment of a balance due case to a Revenue Officer, or the deadline to request a CDP hearing.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS would like to evolve the use of alert banners for a more personalized experience; however, this feature is not currently funded.
TAS Response	Although there is not funding at this time, personalization should be revisited when the IRS receives additional funding for the Online Account. This feature may help taxpayers meet deadlines and take advantage of rights that might otherwise lapse if taxpayers are not reminded of them.
TAS Recommendation	<b>[3-8] Allow taxpayers to add, change, or remove authorized representatives through the Online Account.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS will add these features to Online Account this summer along with the launch of Tax Professional Accounts.
TAS Response	Allowing taxpayers to change their authorized representatives within the Online Account supports taxpayers' <i>right to retain representation</i> . The feature will reduce burden and mitigate delays caused by unopened or unprocessed mail.
TAS Recommendation	<b>[3-9] Allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.

## Appendix 1: IRS Responses to Administrative Recommendations

IRS Action	In future years, IRS plans to add features to the tax professional online account, including a link to the transcript delivery system where tax professionals could both establish authorization and then access records for a particular taxpayer, tax type, and tax year. Currently, tax professionals may use eServices to access transcripts; however, they must first complete the authorization via fax or mail.
TAS Response	For taxpayers who are represented and choose to interact with the IRS exclusively through an authorized representative, the Online Account does not provide much benefit. It is essential that representatives have a way to access the taxpayer's information in the Online Account, limited to only the information the taxpayer has authorized them to access.

TAS Recommendation	<b>[3-10] Allow taxpayers to update their address and other contact information through the Online Account.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS is currently planning for these features to be implemented in FY 2022 in accordance with the IT Modernization Plan, depending on funding and other resource constraints.
TAS Response	Allowing taxpayers to change their address or contact information online is a service that taxpayers already expect with respect to other institutions such as banks. This change will bring the IRS closer to the world-class service it is striving to provide. This new capability should reduce undelivered mail, saving the IRS time and resources and increasing the chances that taxpayers receive their notices and correspondence.

TAS Recommendation	<b>[3-11] Allow taxpayers to make certain requests and file certain forms through the Online Account, such as a CDP request, a penalty abatement request, or a tentative carryback application for refund where e-file is not otherwise available.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	This capability could utilize planned integration of, and access to, secure messaging in Online Account, which is planned for FY 2023. However, this is not currently funded.
TAS Response	Allowing taxpayers to make certain requests and file certain documents online will increase participation in the tax system and mitigate problems caused by unopened and unprocessed mail. TAS looks forward to the IRS making this capability available, even if it is limited to only several types of requests and documents initially.

TAS Recommendation	[3-12] Continue to fund the technological upgrades the IRS requires to provide an enhanced level of service that the country deserves to improve its overall operations.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

TAS Recommendation	[3-13] Provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960s technology systems, create an integrated case management system, and offer robust online accounts for taxpayers and practitioners.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

**Most Serious Problem #4****DIGITAL COMMUNICATIONS: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers****PROBLEM**

The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels. Going forward, the IRS must increase the availability and use of digital communications. To improve taxpayer service and avoid widescale service shutdowns during a future national or local emergency, the IRS should address:

- The crucial need to maintain an omnichannel service environment;
- Taxpayers' need for an expanded and permanent way to digitally transmit and sign documents;
- Authentication barriers for many digital applications;
- Taxpayers' difficulty signing up for Taxpayer Digital Communications Secure Messaging;
- Limited digital communication options for taxpayers (individuals and businesses);
- The need for all digital applications to be mobile-ready; and
- Limited virtual face-to-face service options.

**ANALYSIS**

The IRS addressed many COVID-19 related service shortcomings by developing temporary workaround procedures. It issued guidance, effective through 2020, authorizing employees to accept and transmit documents related to the determination or collection of a tax liability by email. It also expanded the list of forms on which it will temporarily accept electronic signatures. To provide excellent taxpayer service and plan for any future emergencies, the IRS must build upon such temporary initiatives and make permanent improvements in the IRS's digital service offerings. Taxpayers need the option to correspond with the IRS digitally, including attaching and transmitting documents in a secure manner.

The IRS should also expand other digital service options. The success of the Taxpayer Digital Communications (TDC) eGain Text Chat pilot illustrates the need to further expand this program. Increasing the availability of videoconferencing software would benefit taxpayers, especially those taxpayers who live in remote geographic locations or simply prefer this means of communication. However, for taxpayers to benefit from expanded digital service options, the IRS must continually assess the feasibility of increasing e-authentication verification rates while also maintaining strict compliance with National Institute of Standards and Technology (NIST) guidelines. Finally, the provision of high-quality digital services necessitates a shift in IRS culture, in which IRS employees embrace a new way of communicating with taxpayers.

## TAS RECOMMENDATIONS

- [4-1] Maintain a robust omnichannel service environment at the same time that it enhances its digital offerings.
- [4-2] Accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
- [4-3] Make permanent the use of a secured messaging system with taxpayers and their representatives.
- [4-4] Make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
- [4-5] Assess how the new SADI platform will impact different demographics and determine the feasibility of potentially increasing accessibility to digital applications as they are integrated with SADI, while also maintaining compliance with NIST guidelines.
- [4-6] Expand the availability of TDC eGain Text Chat beyond ACS.
- [4-7] Continue to develop digital service tools that are mobile-ready.
- [4-8] Expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted, while ensuring proper authentication and authorization controls are in place.
- [4-9] Provide sufficient funding for the IRS to quickly and safely expand digital services including those proposed by the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress.

## IRS NARRATIVE RESPONSE

The IRS has aimed to increase digital communications and services over the past decade, but funding constraints and operational challenges impeded progress. The COVID-19 pandemic highlighted the critical need to expand digital options to not only promote efficiency but also preserve health and safety. Digital options for taxpayers, tax professionals, and IRS employees are fundamental to effective tax administration.

In response to COVID-19 concerns, the IRS took steps to protect employees, taxpayers, and their representatives by minimizing the need for in-person contact. Taxpayer representatives expressed concerns with securing handwritten signatures for forms required to be filed or maintained on paper. To alleviate these concerns and promote timely filing, the IRS implemented temporary deviations that allow taxpayers and representatives to electronically sign and submit specific forms. We are reassessing this policy to see how the temporary accommodations may be expanded and, in some cases, made permanent.

As detailed in the Taxpayer First Act, Taxpayer Experience Strategy, the IRS is committed to providing increased options for communicating digitally and an improved online experience for all taxpayers while expanding this service to tax professionals. Because digital services will not meet every need, the IRS must continue to provide taxpayers assistance through a variety of channels — including mail, web, telephone, and in person. We will integrate those channels with expanded digital options to seamlessly guide taxpayers to the resources that will best resolve their issue. As the report mentions, Taxpayer Digital Communications Secure Messaging provides taxpayers with an option to digitally communicate with IRS employees in a secure manner and submit electronic documentation quickly and securely at their own convenience. Text chat for



taxpayers with collection questions has expanded to 11 of the 19 Automated Collection System call sites (including bilingual sites), and now allows taxpayers to attach documents such as installment agreement forms and delinquent returns.

Securing our systems and taxpayer data is a top priority for the IRS. In 2017, the National Institute of Standards and Technology (NIST) released Special Publication (SP) 800-63-3 that provided updated digital identity guidelines and created a new framework for federal agencies to improve the security of their identity-proofing and authentication standards. The guidelines redefined how federal agencies implement digital identity services and included substantially more rigorous authentication requirements. By utilizing Credential Service Providers (CSPs) and conducting emerging technology Innovation Studies and usability surveys, the IRS is working to expand identity proofing and authentication options to meet taxpayers' digital service needs and mobile service expectations while adhering to NIST requirements.

Taxpayers deserve personalized digital services that meet their needs and expectations. The IRS is committed to meeting these expectations and creating a positive digital services experience that increases trust in government and promotes voluntary tax compliance.

## **TAS COMMENTS ON IRS NARRATIVE RESPONSE**

The IRS's commitment to increase digital communication options for taxpayers and representatives, as reflected in its Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress, will ensure that taxpayers' right to quality service is realized to a greater extent. It is encouraging that the IRS plans to reassess, with a possibility of expanding or making permanent, temporary procedures permitting electronic signatures and digital submission of documents. These temporary procedures were implemented to accommodate taxpayers and representatives as they interacted with the IRS during service limitations associated with the COVID-19 pandemic, but these expanded options to digitally communicate with the IRS will also prove useful to both taxpayers and IRS employees under normal operating conditions.

While the IRS is making great strides to provide digital services to taxpayers and representatives, it also acknowledges the need to maintain an omnichannel approach to taxpayer service which is consistent with TAS's longstanding recommendations. Allowing taxpayers and representatives to choose the service channel that best suits their needs at any given point in their interactions with the agency is crucial to improve their experience. Pursuant to the Taxpayer Experience Strategy, the IRS not only plans to maintain the different service channels, but it also plans to integrate the various channels to seamlessly guide taxpayers to the resources that will best resolve their issue.

For those taxpayers and representatives who choose to use a digital service channel, they can only gain access to many of the digital applications if they pass the rigorous authentication requirements required by NIST. As the IRS complies with the more rigorous NIST requirements and utilizes CSPs to identity proof taxpayers and representatives, we reiterate the need to continually evaluate how such procedures impact accessibility of the suite of digital applications. Specifically, the IRS should monitor how such authentication requirements impact different demographics and determine the feasibility of potentially increasing accessibility while also strictly adhering to the NIST requirements.

TAS Recommendation	<b>[4-1] Maintain a robust omnichannel service environment at the same time that it enhances its digital offerings.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The Taxpayer First Act Report to Congress includes a vision for a seamless experience that helps taxpayers solve problems and comply with their tax obligations. Under this strategy, we will integrate digital tools with other service channels (e.g., toll-free telephone assistance and walk-in assistance) to resolve issues efficiently and further improve the taxpayer experience. Taxpayers expect and routinely encounter similar “omni-channel” approaches with services like online banking and shopping. Using our omni-channel model, taxpayers will have the flexibility to communicate with the IRS via their preferred method and transition seamlessly to another resource or channel most suited to resolving their issue. We will deploy an omni-channel model to facilitate a 360 degree view of taxpayer records (e.g., real time tax filings, interaction history, appointment schedule, etc.) as well as launch a virtual face-to-face video chat option with IRS employees to simulate an in-person appointment for those that require a human touch point but are unable to or prefer not to meet in person. In addition, the Taxpayer First Act Report to Congress outlines opportunities to enhance digital services as a result of the proposed Organizational Redesign Strategy for the IRS.
TAS Response	The IRS’s vision for a seamless taxpayer experience as set forth in the Taxpayer First Act Report to Congress is a promising development. Taxpayers have a <i>right to quality service</i> , and being able to communicate with the IRS via their preferred service channel, with the ability to transition seamlessly to another service channel, will ensure that this taxpayer right is realized to a greater extent. In addition, the IRS deployment of a 360-degree view of taxpayer records in the omnichannel model will likely significantly reduce burden as taxpayers navigate the IRS to resolve their tax issues. We eagerly await its development.

TAS Recommendation	<b>[4-2] Accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Providing an electronic signature option for all documents is a long-term goal for the IRS. To reach this goal, the IRS developed a framework to assess IRS forms and prioritize them for e-Signature digitization and integration based on risk, policy considerations, federal mandates, and legal requirements. The IRS will use this analysis to identify opportunities to expedite form digitization and enable digital signatures to further enhance the taxpayer experience.
TAS Response	The IRS’s development of a framework to assess and prioritize forms for e-signature is the necessary first step in the process to digitalize forms. Both taxpayers and the IRS will benefit as the IRS makes progress on its long-term goal of enabling electronic signatures on all documents.

TAS Recommendation	<b>[4-3] Make permanent the use of a secured messaging system with taxpayers and their representatives.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS is committed to making secured messaging available for taxpayers and their representatives. As part of the Taxpayer First Act Taxpayer Experience Strategy, the IRS outlined plans for a digital portal for taxpayers to securely access their tax information, make changes to their personal information, and communicate with the IRS online. These plans include providing secure two-way messaging that will give taxpayers the ability to communicate with IRS employees through their online accounts. This feature comes with related increased costs for licenses and technology support and must be prioritized in the context of other initiatives within the agency's taxpayer experience strategy and information technology modernization efforts.
TAS Response	The IRS's commitment to making secured messaging available to both taxpayers and representatives in the Taxpayer Experience Strategy is encouraging. We acknowledge that such plans are costly and, to address this issue, the National Taxpayer Advocate has made a legislative recommendation to provide sufficient funding to implement the digital services proposed in the Taxpayer First Act Report to Congress.

TAS Recommendation	<b>[4-4] Make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	In January 2021, the IRS established a cross-functional team to evaluate the long-term viability, benefits, and risks of these flexibilities and develop recommendations as to whether these temporary policies should be extended, and the specific forms listed expanded. While these deviations may not be permanent, secured messaging will continue to be utilized as the IRS moves toward a fully digitalized state.
TAS Response	In its response, the IRS committed to continue secured messaging as it moves toward a fully digitized state. The cross-functional team's evaluation of the long-term viability of the current temporary policies is necessary to ensure all data security vulnerabilities are adequately addressed.

TAS Recommendation	<b>[4-5] Assess how the new SADI platform will impact different demographics and determine the feasibility of potentially increasing accessibility to digital applications as they are integrated with SADI, while also maintaining compliance with NIST guidelines.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We recognize that underserved taxpayers face unique challenges with regard to authentication and identity assurance. Deploying the focused strategies for reaching underserved communities envisioned under the Taxpayer First Act Taxpayer Experience Strategy should address these unique challenges.
TAS Response	The Taxpayer Experience Strategy specifically references online account authentication for international taxpayers in its focused strategies to reach underserved communities. While this is certainly an important effort, we encourage the IRS to commit to expand efforts to increase the e-authentication verification rate for underserved communities.

TAS Recommendation	<b>[4-6] Expand the availability of TDC eGain Text Chat beyond ACS.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS supports expanding the availability of the TDC Platform capabilities, including text chat, authenticated chat, chat deflection, and virtual assistant, to assistors Servicewide, subject to resource constraints and prioritization. The IRS considers utilization of all TDC capabilities regularly and executes a periodic prioritization process to expand TDC usage within resource constraints. Our next prioritization effort is planned for FY 2022, and we will seek for this recommendation to be prioritized and funded, in which case we will expand chat capabilities accordingly.
TAS Response	We acknowledge that current funding limitations restrict the IRS's ability to expand TDC Platform capabilities, and we are encouraged that the IRS commits to consider such expansion during its FY 2022 prioritization effort. In addition, the National Taxpayer Advocate has made a legislative recommendation that Congress adequately fund the IRS's Taxpayer Experience Strategy, which includes widespread integration of chat capabilities.

TAS Recommendation	<b>[4-7] Continue to develop digital service tools that are mobile-ready.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Consistent with the 21st Century Integrated Digital Experience Act legislation, the IRS is already obligated to develop new tools and services into mobile-ready experiences subject to legislative timelines and funding or other resource constraints. While we are actively working toward this goal, this activity will be ongoing with no final implementation date.
TAS Response	The IRS's response acknowledges funding and other resource constraints as it actively works toward meeting its legislative obligations to make tools and services mobile-ready. The National Taxpayer Advocate has made a legislative recommendation that Congress adequately fund the IRS's Taxpayer Experience Strategy, which includes widespread integration of mobile services.

TAS Recommendation	<b>[4-8] Expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted, while ensuring proper authentication and authorization controls are in place.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS is deploying several virtual face-to-face technology processes within available resources and funding in order to increase virtual services long-term. As part of the assessment process, the IRS is updating policies to ensure proper authentication, authorization, monitoring, and data protection controls are in place. Because of the urgent need for virtual interactions, the IRS is expediting the roll-out by investigating and deploying multiple virtual technologies at the same time. Making these technologies widely available to front-line assistors, tax examiners, revenue officers, and revenue agents will require significant new investment in software, network infrastructure, and cybersecurity controls and must be prioritized in the context of other initiatives within the agency's taxpayer experience strategy and information technology modernization efforts.
TAS Response	The IRS's response recognizes the urgent need to expand virtual services and mentions that the agency has already taken steps to expedite the deployment of several virtual technologies. In addition, the IRS is taking the critical initial steps to update policies for authentication, authorization, monitoring, and data protection controls to ensure successful deployment of such services. The IRS did not commit to roll out the technologies to all taxpayer-facing functions due to a need to prioritize initiatives given the agency's limited resources. Accordingly, the National Taxpayer Advocate will continue to recommend that Congress adequately fund the IRS's Taxpayer Experience Strategy, which includes plans to expand virtual services.

TAS Recommendation	[4-9] Provide sufficient funding for the IRS to quickly and safely expand digital services including those proposed by the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

**Most Serious Problem #5****E-FILING AND DIGITALIZATION TECHNOLOGY: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources****PROBLEM**

The IRS's antiquated information technology systems and infrastructure present significant obstacles to expanding electronic filing (e-filing) and digitizing paper returns. Automated processing of an e-filed form eliminates the need for the costly manual transcription of millions of lines of data, and the increased accuracy of the data imported reduces the need to resolve transcription errors. While most taxpayers prefer e-filing when it is available, some prefer to file paper returns or must file on paper because they do not have access to a computer or broadband internet. Therefore, even as the IRS expands its e-filing options, it must maintain options that allow taxpayers to choose their preferred method of filing. It must also improve the processing of paper returns by expanding existing technology and implementing new technology to reduce processing delays. These actions reduce burden to taxpayers and the IRS and produce long-term cost savings.

**ANALYSIS**

Under the IRS's Modernized e-File (MeF) System, taxpayers can e-file some returns and forms; however, more than 40 active forms still require paper filing. Some taxpayers who e-file experience processing delays because the IRS cannot digitally accept certain documents attached to an e-filed return, requiring the taxpayer to file them separately on paper. Over 920,000 taxpayers used tax preparation software but were unsuccessful in e-filing their 2018 tax return before needing to mail a paper return to the IRS. Taxpayers filing by mail who were unable to e-file their return because of the IRS's technological shortcomings experienced longer wait times to receive their refund.

When processing paper returns, such as Form 1040, a submission processing employee manually enters the information from each line into IRS systems. Manual data entry inevitably leads to transcription errors, which then must be identified and corrected. Expanded use of technology such as Optical Character Recognition (OCR) and 2-D barcoding will allow the IRS to automate processing and reduce the need for costly manual transcription, which would allow it to accept more forms and attachments electronically.

The coronavirus pandemic reinforced the importance of the IRS embracing digitalization technology to allow taxpayers to transmit documents to the IRS electronically. The IRS temporarily permitted the use of electronic signatures for more than a dozen forms, allowing taxpayers and their representatives to fulfill their filing responsibilities without being in the same physical location or relying on the mail to transfer documents and allowed the IRS to conduct its business untethered to a physical location. We recommend that the IRS continue to expand the use of all possible electronic filings and communication.



## TAS RECOMMENDATIONS

- [5-1] Make and publish an e-file plan for the forms that taxpayers cannot e-file.
- [5-2] Reevaluate the MeF System to allow for e-filing of all forms, schedules, and attachments.
- [5-3] Expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors.
- [5-4] Make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic.

## IRS NARRATIVE RESPONSE

We continuously strive to improve how we process returns, whether filed electronically or on paper. Electronic return filing continues to trend upward, and overall through September 30, 2020, individual electronically filed returns were up 9.1% and electronically filed business returns were up 5.7% from last year. For FY 2020, the IRS processed over 150 million individual and almost 30.7 million business electronically filed returns.

Free File also continues to outpace last year. As of November 21, 2020, total returns filed through the Free File program are up over 300%, due in part to returns filed through the Non-Filer application or via the many partners that offered a streamlined entry for non-filers to claim their Economic Impact Payment (EIP). All of the IRS partners in the Free File Initiative (FFI) stepped up to provide a variety of Non-Filer utilities, including products in Spanish and an online Non-Filers tool to enable taxpayers to file for the EIP. As of November 21, 2020, over 8 million citizens received their EIP thanks to the FFI's efforts.

When removing EIP from consideration, Free File still marked a 50% increase this year as more than 4.2 million taxpayers used one of the free online partner products. To continue expanding the program, the IRS also introduced a host of new web changes for the Free File pages on IRS.gov. These changes, which were released in September, were based on the findings and recommendations from last summer's independent review of the program along with findings from focus group research conducted in December 2018. The IRS is currently assessing other recommendations from external stakeholders and oversight agencies, including the Treasury Inspector General for Tax Administration, National Taxpayer Advocate, Internal Revenue Service Advisory Council (IRSAC), and Government Accountability Office, among others, to inform future improvements.

The IRS has also expanded electronic filing options to include an electronic version of amended Form 1040 returns. The ability to electronically file the Form 1040X, Amended U.S. Individual Income Tax Return, has been an important goal of the IRS, the tax software, and tax professional industry for many years. It is also an ongoing recommendation from the IRSAC and the Electronic Tax Administration Advisory Committee. The availability of an electronically filed Form 1040X is a great success for IRS modernization efforts, given the numerous challenges to adding this form to the e-file family due to the details needed on the form. As of November 21, 2020, over 144,000 electronically filed amended returns have been accepted from 18 industry partners. Electronically filing Form 1040X provides taxpayers with a quicker, easier way to submit amended returns, streamlines work for the IRS and the entire tax community, and minimizes errors normally associated with manually completing the form.

Given the many benefits of e-filing, digitalization and technologies such as 2-D barcoding and Optical Character Recognition, the IRS continues to support their implementation. However, the speed with which we can execute these improvements is sometimes limited by available resources.

## TAS COMMENTS ON IRS NARRATIVE RESPONSE

As the IRS rightly points out, the number of taxpayers using electronic filing is growing. When the IRS offers new e-filing options, such as introducing the ability to electronically file Form 1040X, a large number of taxpayers are ready and waiting to use the new service. There is clearly a substantial demand for the service from taxpayers. The IRS also deserves praise for announcing the 2021 launch of online submission of Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization. Combined, the IRS received nearly 3.2 million of those two forms in 2019. Offering electronic filing of these forms provides better service to taxpayers and will reduce the IRS's paper processing workload.

The IRS cannot further expand e-filing options without the necessary resources from Congress, but nothing stands in the way of the IRS making an e-file plan for the forms that taxpayers cannot e-file and publishing it. Without a published schedule for upgrades, the IRS's plan for improving the e-file system seems to be "the squeaky wheel gets the grease," but that is not an effective long-term strategy. Instead of addressing forms one at a time, the IRS needs to establish a plan for all forms to be part of the MeF System and allow itself to be held accountable for meeting established goals.

The IRS supports more widespread implementation of e-filing, digitalization, and technologies such as 2-D barcoding and Optical Character Recognition, but points to lack of resources. Resource limitations are an ongoing issue for the IRS but should not stand in the way of having a plan ready for future upgrades as resources become available.

As the IRS extended the temporary deviation from the wet signature requirement on at least 20 forms<sup>6</sup> and allows electronic signatures for an additional six months, it should consider allowing electronic signatures on a permanent basis.

TAS Recommendation	<b>[5-1] Make and publish an e-file plan for the forms that taxpayers cannot e-file.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.

<sup>6</sup> See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

## Appendix 1: IRS Responses to Administrative Recommendations

IRS Action	The W&I e-File Services organization will continue to support the Digitalization Office and Information Technology as the lead stakeholders in the agency to determine the best way to move forward to expand IRS digitalization technology as outlined in the IRS Integrated Modernization Plan and required by the Taxpayer First Act. This includes developing an e-file plan for evaluating and prioritizing forms that taxpayers cannot currently e-file that is flexible to meet IRS priorities while continuing to respond to new legislative and other critical operational needs.
TAS Response	Developing and publishing an e-file plan that includes all forms that taxpayers cannot currently e-file will demonstrate the IRS's commitment to reducing e-filing barriers for all taxpayers. Expanding e-filing options will provide better service to taxpayers and will reduce the IRS's paper processing workload.

TAS Recommendation	<b>[5-2] Reevalue the MeF System to allow for e-filing of all forms, schedules, and attachments.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS will perform a study to determine the feasibility of allowing all forms, schedules, and attachments to be electronically filed using the current MeF infrastructure based upon agency priorities and available resources (e.g., allocated funding, project schedule, programming resources).
TAS Response	It is encouraging that the IRS will study the feasibility of allowing all forms, schedules, and attachments to be electronically filed. Expanding e-filing options will provide better service to taxpayers and will reduce the IRS's paper processing workload.

TAS Recommendation	<b>[5-3] Expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS is piloting the conversion of paper returns to a digital format in the Lockbox environment. The pilot is currently working through the technical and legal questions involved. The IRS is also exploring the expanded use of optical character recognition (OCR) for paper tax returns in a separate pilot project. As part of the IRS's digitalization strategy, the IRS may consider these and other options for some forms, correspondence, and other paper submissions. Both barcoding and OCR technology have limitations and costs. For example, barcoding does not encode all information on complex returns, and OCR may misinterpret some information, requiring quality review and manual re-entry (as does the current manual transcription process).

TAS Response	It is encouraging that the IRS is exploring the expanded use of OCR for paper tax returns through a pilot project and is willing to consider expanded use of barcoding on paper returns. All technologies have associated limitations and costs, but OCR and barcoding can be valuable tools for improving the IRS's paper processing systems.
TAS Recommendation	<b>[5-4] Make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	Not all temporary changes may be made permanent due to National Institute for Standards & Technology (NIST) requirements. However, the IRS continues its work towards identifying permanent signature solutions that allow for electronic submission of forms and digital transactions in a secure manner that meets NIST requirements. As we work toward permanent solutions, we are committed to maintaining as much flexibility as possible for electronic and digital signature requirements. We are taking specific actions in hopes of speeding up our e-Signature Program due to the increased need for virtual interactions during the pandemic.
TAS Response	TAS understands the agreement in part and that the IRS is bound by NIST requirements. It is encouraging that the IRS is committed to maintaining as much flexibility as possible for electronic and digital signature requirements.

**Most Serious Problem #6****INFORMATION TECHNOLOGY MODERNIZATION: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts****PROBLEM**

Despite its responsibility for collecting the most tax revenue in the world and its vital role in social benefits administration, the IRS operates with severely outdated information technology (IT) systems and infrastructure. Without a substantial overhaul of its IT systems, some of which were originally developed in the 1960s, and transformation of how the IRS interacts with taxpayers, the IRS cannot provide first-rate taxpayer service or efficiently carry out its enforcement and collection efforts. As the nation's tax collector, the IRS can ill-afford to have its systems crash. The IRS will require significant, sustained multi-year funding from Congress to modernize its IT systems. Disruptions in IRS operations can erode taxpayer confidence in the tax administration system and ultimately lead to reduced levels of tax compliance.

**ANALYSIS**

The IRS is overwhelmingly reliant on “legacy” IT systems — which the IRS's IT function has defined as systems that are at least 25 years old, use obsolete programming languages (*e.g.*, Common Business-Oriented Language), or lack vendor support, training, or resources to maintain. The Treasury Inspector General for Tax Administration issued a report in August 2020 that found the IRS had not developed a coordinated plan to address updating, replacing, or retiring its legacy systems. In a recent congressional hearing, the Government Accountability Office noted that the IRS was still reliant on the Individual Master File, a system initially developed over 50 years ago, to update taxpayer account data, assess taxes, and generate refunds.

In April 2019, the IRS released a six-year Integrated Modernization Business Plan (“modernization plan”) to improve IT infrastructure, make tax administration more efficient, and enable the IRS to provide better taxpayer service. However, the IRS cannot implement its modernization plan until Congress provides adequate funding — which is outside of the IRS's control. Not only must Congress provide the IRS with sufficient appropriations, but such funding must be consistent and reliable from year to year. In addition, the IRS must internally allocate enough of its budget to IT modernization in a manner that will not allow interruption of the modernization efforts.

**TAS RECOMMENDATIONS**

- [6-1] Compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions.
- [6-2] Expedite the development of a Servicewide centralized system to store digital tax records to allow the IRS to go completely paperless.

- [6-3] Create CIO liaisons for each IRS division knowledgeable about both the business needs and the technical aspects to bridge the disconnect between the needs of the IRS divisions and what IT can deliver.
- [6-4] Compile a list of IT lessons learned during COVID-19, documenting the problems taxpayers experienced due to IT-related challenges during the pandemic so it can be better prepared for the future.
- [6-5] Expand modernization efforts to include BMF to provide a comparable level of service (*e.g.*, online accounts, digital services, shorter processing cycles (CADE 2), etc.) to business taxpayers it will provide to individual taxpayers.
- [6-6] Ensure the amount requested for its IT budget is sufficient and sustainable to fully fund its multiyear modernization plan.
- [6-7] Consider seeking financial assistance from the Technology Modernization Fund.
- [6-8] Provide the IRS with sufficient, sustained funding to improve taxpayer service and modernize its IT systems over a predictable multiyear period, allowing the IRS to properly implement its modernization plan as a whole and not in pieces.
- [6-9] Ensure that any increase in funding for enforcement (including program integrity cap adjustments) is coupled with a commensurate increase in funding for service and operations support so taxpayers seeking to respond to the IRS can do so easily. This way, the IRS need not prioritize IT over enforcement.

## IRS NARRATIVE RESPONSE

The IRS appreciates the National Taxpayer Advocate's support for significant, sustained multi-year funding to modernize the IT systems that enable 21st century taxpayer service and fairness in our tax system. The IRS interacts with more Americans than any other public or private organization. As the National Taxpayer Advocate recognized, IT systems are critical to all aspects of tax administration, including collection of almost \$3.6 trillion in revenue each year (representing almost 96 percent of the gross revenue of the United States, each year), administering various subsidies such as the Earned Income Tax Credit, distributing hundreds of billions of dollars in tax refunds, delivering hundreds of billions of dollars in any potential future stimulus payments, providing customer service to tens of millions of taxpayers, and, as we saw in 2020, providing rapid financial relief to individuals and businesses when necessary.

The IRS also appreciates the National Taxpayer Advocate's recognition of the unprecedented challenges posed by the COVID-19 pandemic and the outstanding performance of our employees in delivering more than 160 million Economic Impact Payments totaling more than \$270 billion and implementing other CARES Act provisions, provisioning more than 15,000 IRS customer service representatives and other employees with laptops, and growing network capacity five-fold to support over 59,000 employees working remotely at one time — all during the middle of the longest filing season in history.

As the National Taxpayer Advocate noted, IRS is making considerable progress delivering upon the initiatives within the IRS Integrated Modernization Business Plan, despite appropriated funding at just over half the requested level. In the first two years of the plan, the IRS deployed secure online account features

for individuals, the first iteration of a cloud-based case management system to improve taxpayer service, customer callback on several toll-free phone lines, and over 35 other capabilities to improve our technology infrastructure, systems, and cybersecurity defenses.

Although some of the IRS's core tax administration applications use aged programming languages, they operate on current, state-of-the-art hardware. In fact, at the end of FY 2020, the IRS's aged hardware percentage was 16 percent, below the industry standard of 20 to 25 percent. As the National Taxpayer Advocate describes, the primary risk in maintaining these systems is that there is a small and shrinking pool of engineers and developers who can make the changes required to prepare for each filing season and promptly respond to new legislation. We are mitigating these risks with robust training and a focus on transferring knowledge to our next generation of technical experts.

The IRS remains committed to transparent reporting on modernization progress, challenges, successes, costs, and risks to Congress and other stakeholders. We share the National Taxpayer Advocate's vision for improved taxpayer service, more effective revenue collection, and more efficient operations, in part through the modernization of the IRS's information technology.

## TAS COMMENTS ON IRS NARRATIVE RESPONSE

The National Taxpayer Advocate shares many of the sentiments expressed in the IRS response to this Most Serious Problem. Without question, the IRS is increasingly being asked to do more with less. The fallout of the COVID-19 pandemic exacerbated the challenges, but the IRS has performed admirably during this crisis to continue delivering quality service to taxpayers.

As the nation's primary revenue collector, the IRS is tasked with a role that is too important for Congress to short circuit its necessary investment in technology. It is vital that the IRS succeed in these efforts.

We are aligned with the IRS regarding the need for Congress to fully fund the IRS's efforts to modernize its systems. The IRS has devoted a substantial amount of thought and resources into developing its modernization plan; Congress should help, not hinder, the IRS's efforts to implement that plan.

TAS Recommendation	[6-1] Compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions.
IRS Response	IRS agrees to implement TAS recommendation in full.



## Appendix 1: IRS Responses to Administrative Recommendations

IRS Action	As required by the Office of Management and Budget (OMB), the IRS will continue to regularly report upon our major and minor information technology investments through ITdashboard.gov and other forums. The IRS will also continue to improve cost tracking and reporting according to new government-wide standards such as the Technology Business Management (TBM) framework, as resources and funding allow. While the IRS does consider cost as one factor, decommissioning decisions almost always rely upon other factors such as taxpayer or employee experience, security and risk of aging hardware and software, architectural direction, and other operational considerations.
TAS Response	Compiling this data is in direct support of the IRS Modernization Plan. TAS looks forward to working with the IRS to make this priority successful.
TAS Recommendation	<b>[6-2] Expedite the development of a Servicewide centralized system to store digital tax records to allow the IRS to go completely paperless.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS is committed to strengthening data intake capabilities to enable enhanced validation, storage, protection, and sharing of data. The IRS established the new Enterprise Digitalization and Case Management Office (EDCMO) in FY 2020 to strategically address these needs and enhance the taxpayer and employee experience by spearheading the IRS's efforts to modernize and consolidate systems, simplify business processes, and empower taxpayers and employees to rapidly resolve issues in a simplified digital environment. Specifically, EDCMO is developing and leading efforts to transform the IRS into a more digitally driven agency through innovative initiatives designed to reduce paper volume, increase access to digital data, and prepare the IRS to effectively manage and leverage digital data. As part of this, the IRS is committed to working as quickly as possible to increase the amount of paper-based forms and tax records that can be stored digitally and other efforts that push the IRS towards becoming more paperless wherever possible.
TAS Response	TAS looks forward to the IRS's plan to comply with the National Archives and Records Administration (NARA) criteria for all records. TAS is encouraged by the possibilities brought about by tools such as the documentation upload tool (DUT) ( <i>i.e.</i> , the pilot for digital mailroom).
TAS Recommendation	<b>[6-3] Create CIO liaisons for each IRS division knowledgeable about both the business needs and the technical aspects to bridge the disconnect between the needs of the IRS divisions and what IT can deliver.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.

IRS Action	All operating divisions have a dedicated Business System Planning (BSP) individual or function that serves a role similar to what the National Taxpayer Advocate describes. Additionally, Information Technology (IT) leadership regularly meets with operating division leadership to discuss strategic and tactical priorities and acts upon requests as necessary. In the near future, as part of the Taxpayer First Act reorganization strategy, the IRS will strengthen the bridge between the operating divisions and IT at the most senior level, as the CIO will directly report to the IRS Commissioner to work closely with peers in taxpayer service, compliance, strategy, and operations to deliver upon Service-wide priorities. With additional hiring authority and budgetary resources, IT will expand the current business relationship management program whereby specific liaisons within IT act as concierges to help business unit customers navigate complex IT processes and ensure service needs are met.
TAS Response	TAS is encouraged by the IRS meeting with IT leadership on a regular basis. TAS looks forward to working with the IRS to advance these goals to create a seamless experience for taxpayers and employees.
TAS Recommendation	<b>[6-4] Compile a list of IT lessons learned during COVID-19, documenting the problems taxpayers experienced due to IT-related challenges during the pandemic so it can be better prepared for the future.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS has documented lessons learned from various actions related to COVID-19 and the CARES Act, including Economic Impact Payment processing. Further, the IRS has actually implemented these lessons in our programming, processes, and operations for subsequent relief efforts, such as the second Economic Impact Payment. Because the pandemic is still ongoing, and IT resources are focused on implementing additional legislative, filing season, and modernization functionality, the IRS will share existing documentation with the National Taxpayer Advocate, but will only document additional information as resources allow.
TAS Response	TAS looks forward to reviewing the lessons learned and working with the IRS to implement actions to mitigate future issues.
TAS Recommendation	<b>[6-5] Expand modernization efforts to include BMF to provide a comparable level of service (e.g., online accounts, digital services, shorter processing cycles (CADE 2), etc.) to business taxpayers it will provide to individual taxpayers.</b>
IRS Response	IRS does not agree to implement TAS recommendation. The IRS agrees with the importance of the Business Master File (BMF) and continued modernization of the business taxpayer experience in parallel with improvements to the individual taxpayer experience. However, these efforts are likely to require funding and prioritization within the Operations Support portfolio, rather than trying to fit within the very limited Business Systems Modernization (BSM) appropriation and Modernization Plan. The IRS continues to make improvements for business taxpayers in FY 2020 and FY 2021, including customer callback on several business phone applications, integration of BMF data with ECM, and digital communication opportunities with several types of individual, business, and tax exempt customers and their representatives.

## Appendix 1: IRS Responses to Administrative Recommendations

IRS Action	N/A
TAS Response	TAS believes that BMF taxpayers have the same rights as Individual Master File (IMF) taxpayers to have an end-to-end modernized, real-time platform (i.e., information submission, document processing, taxpayer experience, etc.). TAS is encouraged that the IRS acknowledges the importance of BMF modernization.

TAS Recommendation	<b>[6-6] Ensure the amount requested for its IT budget is sufficient and sustainable to fully fund its multiyear modernization plan.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS agrees to request the funding required to operate and maintain existing systems, to fund modernization efforts, and to deliver legislation such as the CARES Act. However, the IRS collaborates with the Department of the Treasury, Office of Management and Budget, and Congress through the passback and President's Budget process. Congress ultimately determines appropriation levels, including the business systems modernization appropriation.
TAS Response	TAS appreciates the complexity of the budget process and will work with IRS to raise awareness for the needed additional funding and provide the necessary justification for budget requests.

TAS Recommendation	<b>[6-7] Consider seeking financial assistance from the Technology Modernization Fund.</b>
IRS Response	IRS does not agree to implement TAS recommendation. While the IRS appreciates government-wide efforts to fund technology modernization and cybersecurity work, the Technology Modernization Fund (TMF) has specific requirements that make other options better suited to our funding challenges. In particular, projects funded by the TMF are expected to pay back loans over five years from regular appropriations, projects are funded on an incremental basis based upon milestone completion, and the use of rapid and iterative development practices is expected. When the IRS implements new technology, even in situations where we replace legacy systems, operations and maintenance costs are often higher for the new system and require ongoing funding (i.e., direct appropriations). Further, one of the key requirements for the IRS Modernization Plan is stable and predictable funding, a requirement that the TMF cannot guarantee.
IRS Action	N/A

## Appendix 1: IRS Responses to Administrative Recommendations

TAS Response	TAS appreciates that the IRS took the time to consider the use of the TMF funds, similar to other larger government agencies. The use of TMF funds could supplement funds allocated by Congress and should be viewed as complementary to that funding. TMF is an alternative source for short-term modernization funding that may assist in completing some of the pilots outlined in TFA for the one- to three-year timeframe.
TAS Recommendation	<b>[6-8] Provide the IRS with sufficient, sustained funding to improve taxpayer service and modernize its IT systems over a predictable multiyear period, allowing the IRS to properly implement its modernization plan as a whole and not in pieces.</b>
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A
TAS Recommendation	<b>[6-9] Ensure that any increase in funding for enforcement (including program integrity cap adjustments) is coupled with a commensurate increase in funding for service and operations support so taxpayers seeking to respond to the IRS can do so easily. This way, the IRS need not prioritize IT over enforcement.</b>
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

**Most Serious Problem #7****CORRESPONDENCE EXAMS: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits****PROBLEM**

In response to taxpayer complaints about the inability to contact IRS staff directly, section 3705(a) of the Restructuring and Reform Act of 1998 (RRA 98), required that IRS correspondence “include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee.” However, more than 20 years later, the IRS still has not meaningfully implemented this provision regarding its correspondence audit programs. This makes it difficult and frustrating for taxpayers or their representatives to reach a single point of contact at the IRS who is accountable and knowledgeable when seeking answers to questions about their audit or the information they submitted. The IRS correspondence audit program, as designed, leaves taxpayers solely dependent on toll-free phone services that operate with limited availability or receiving IRS notifications issued with uncertain timeframes. The inability to reach a single point of contact diminishes the customer experience, creates IRS inefficiency, hinders opportunities to engage and educate our nation’s taxpayers and decreases potential for developing and building trust with the IRS.

**ANALYSIS**

More than 70 percent of the audits conducted by the IRS are correspondence audits. Although the number of taxpayers selected for examination has declined in recent years, the percentage of IRS audits conducted by correspondence has increased from fiscal years (FYs) 2016 to 2018 with a slight decrease in 2019. Because correspondence audits represent one of the most significant tools the IRS employs to achieve voluntary compliance, the taxpayer’s ability to interact and communicate with the IRS is vitally important to the success of the correspondence audit process, the quality of service provided, and the fair and just treatment of taxpayers.

Unlike other IRS audits, correspondence audits are not assigned to a single examiner who will work the case in its entirety and serve as the taxpayer’s single point of contact for questions. Taxpayers undergoing a correspondence audit are referred to a toll-free number where they may discuss their case with an IRS phone assistant who generally holds no responsibility for the actions or determinations made with their audit. The high volume of correspondence audits combined with limited communication alternatives, insufficient levels of service, and the inability to contact a knowledgeable and accountable IRS employee often cause unnecessary taxpayer burden and hinder several taxpayer rights, including the *right to quality service*.

**TAS RECOMMENDATIONS**

- [7-1] Provide taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee’s secure email address or the TDC Secure

messaging access needed to send and receive documents and communicate electronically with the assigned examiner.

- [7-2] Ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free phone services, timely correspondence responses, and timely audit completion.
- [7-3] Expand TDC Secure Messaging capabilities to all correspondence audit programs.

## IRS NARRATIVE RESPONSE

Correspondence Exam is a critical part of the IRS's overall compliance approach to fair and balanced tax administration. The IRS designed Correspondence Exam to work single issue (non-complex) and single year cases that can easily be resolved via mail, allowing for broader geographic coverage. The program supports the IRS strategic goal to protect the integrity of the tax system by encouraging compliance through administering and enforcing the tax code.

As previously noted in the IRS responses to the 2014 and 2018 National Taxpayer Advocate Annual Report to Congress, it is not practical to assign one employee to handle all aspects of a taxpayer's correspondence examination from beginning to end. When we receive a written response from a taxpayer, it is assigned to one tax examiner to review,<sup>7</sup> and when the tax examiner sends a letter in response, the letter identifies the tax examiner by name and includes Exam's toll free telephone number since tax examiners do not have direct telephone lines. When taxpayers call the Correspondence Exam toll-free line, their call is routed to the next available assistor. Phone assistants are trained and experienced tax examiners, have access to the taxpayer's case history, and work with the taxpayer toward case resolution. However, if a taxpayer responds to an examination letter with correspondence and later calls the toll-free line and is not satisfied at the end of the call, they can request that the assigned tax examiner return their call.

Since 2017, Correspondence Exam has improved communications by digitizing a population of case files. Although transparent to taxpayers, some taxpayer correspondence is digitized and uploaded to the case file. Digitized cases improve customer service by increasing the visibility of case information. Telephone assistants can electronically view correspondence previously sent in by the taxpayer, regardless of which IRS site received the correspondence. This assists in resolving taxpayer inquiries more expeditiously.

We continued to improve communications with taxpayers with the expansion of secure messaging within Taxpayer Digital Communications (TDC) to all five SB/SE campuses. With TDC, taxpayers who sign up can submit documents online and easily ask questions. They do this without waiting in a queue, at their convenience, and on their own schedule. In general, like with paper correspondence, these messages are directed back to the examiner who last worked their case. The current customer satisfaction rating is 83.2 percent, and it is our expectation that as more taxpayers take advantage of this communication vehicle, we'll continue to see this high level of customer satisfaction.

<sup>7</sup> IRM 4.19.10.1.5.1(6), Correspondence Examination Letters (Dec. 8, 2017). Letters mailed on cases in the corporate inventory will include the appropriate Business Operating Division (BOD) corporate toll-free number, "Tax Examiner" as person to contact, and the site-specific identification number. If the letter sent is in reply to taxpayer correspondence, the letter, case history, and all letter attachments must identify the originating tax examiner to provide information for any subsequent contact, if needed.

Regarding the Earned Income Tax Credit (EITC), the IRS currently staffs a year-round toll-free telephone line in order to answer questions on EITC correspondence audits, many of which contain an audit issue for the Child Tax Credit/Additional Child Tax Credit. Our employees who answer these toll-free calls are trained and experienced, and best equipped to answer taxpayer telephone calls related to these potential audit issues. To enhance the taxpayer experience on the phone, a new Fast Track option will be implemented in 2021 for taxpayers inquiring about whether we received their documentation. This option will reroute incoming customer calls to an assistant to provide taxpayers with information on the receipt and status of their correspondence. We will continue to leverage available technology, as budget permits, to enhance taxpayers' experience when interacting with the IRS.

## TAS COMMENTS ON IRS NARRATIVE RESPONSE

While the IRS advises that it is not practical to assign one employee to handle all aspects of a taxpayer's correspondence examination, the described procedures suggest that correspondence audits are primarily assigned and worked by one employee. The simple lack of a direct telephone line, however, prevents the taxpayer from contacting the assigned employee directly, enabling the assigned examiner to serve as the taxpayer's single point of contact for assistance. Correspondence examiners hold responsibility for both staffing the correspondence audit toll-free phone lines and for auditing the tax returns selected for correspondence audit. It is unclear why these employees can audit returns and answer calls, yet it is impractical for correspondence examiners to answer calls from the taxpayers they are assigned to audit.

Recently implemented telephone and TDC technology, could serve to enhance the IRS's ability to provide taxpayers a single point of contact for correspondence audit assistance, and demonstrates that IRS has the capability to provide correspondence audit examiners with phone lines equipped to receive direct incoming calls. As stated, the inability to reach a single point of contact diminishes the customer experience, creates IRS inefficiency, and hinders opportunities to engage and educate our nation's taxpayers. Providing taxpayers who have responded to their correspondence audit notifications with the contact information of the assigned examiner will improve the customer experience, improve efficiency and is necessary for tax administration. Because correspondence exam is recognized as a critical part of the IRS's overall compliance approach to fair and balanced tax administration, the IRS must be willing to reconsider its current approach to the correspondence audit process — the process used to conduct the highest percentage of taxpayers audits throughout the IRS. In light of the fact that correspondence audits result in the highest rate of audit deficiencies assessed by default<sup>8</sup> and produced a high volume of petitions to the U.S. Tax Court, this is an area ripe for improvement.

<sup>8</sup> IRM 4.8.9.26, Defaulted Notices (July 9, 2013). The IRS may assess a proposed audit deficiency by default if the taxpayer does not petition the U.S. Tax Court within 105 days of the date a Statutory Notice is issued (165 days if the taxpayer resides outside of the U.S.). IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020).



TAS Recommendation	<b>[7-1] Provide taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee's secure email address or the TDC Secure messaging access needed to send and receive documents and communicate electronically with the assigned examiner.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation. As outlined in our response included in the National Taxpayer Advocate's report, and previously noted in IRS responses to the 2014 and 2018 National Taxpayer Advocate Annual Reports to Congress, it is impractical to assign one employee to handle all aspects of a taxpayer's correspondence examination from beginning to end. When we receive a written response from a taxpayer, it is assigned to one tax examiner to review. When the tax examiner sends a letter in response, the letter identifies the tax examiner by name and includes Examination's toll-free telephone number, since tax examiners do not have direct telephone lines. By calling the toll-free telephone number at their convenience, taxpayers reach the next available phone assistant. All phone assistants are trained and experienced tax examiners who have access to the taxpayer's case history and can work with the taxpayer toward case resolution. However, if a taxpayer responds to an examination letter with correspondence and later calls the toll-free line and is not satisfied at the end of the call, they can request that the assigned tax examiner return their call.<sup>9</sup></p> <p>In 2020, the IRS expanded secure messaging within Taxpayer Digital Communications (TDC) to all five of the Small Business/Self-Employed Division's (SB/SE) campuses. In general, like with paper correspondence, these messages are directed back to the examiner who last worked their case.</p> <p>We believe our current procedures appropriately balance taxpayer service with sound tax administration within our current resource constraints.</p>
IRS Action	N/A
TAS Response	While the IRS continues to advise that it is not practical to assign one employee to handle all aspects of the taxpayer's correspondence examination, the described procedures suggest that correspondence audits are primarily assigned and worked by one employee. Correspondence examiners hold responsibility for both staffing the correspondence audit toll-free phone lines and for auditing the tax returns selected for correspondence audit. It remains unclear why these employees can audit returns and answer calls, yet it is impractical for correspondence examiners to answer calls from the taxpayers they are assigned to audit.
TAS Recommendation	<b>[7-2] Ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free phone services, timely correspondence responses, and timely audit completion.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.

<sup>9</sup> IRM 4.19.10.1.7.1(6), Correspondence Examination Letters. Letters mailed on cases in the corporate inventory will include the appropriate BOD corporate toll-free number, "Tax Examiner" as person to contact, and the site-specific identification number. If the letter sent is in reply to taxpayer correspondence, the letter, case history, and all letter attachments must identify the originating tax examiner to provide information for any subsequent contact, if needed.

## Appendix 1: IRS Responses to Administrative Recommendations

IRS Action	<p>Since 2014, SB/SE Correspondence Examination has used the Enterprise Planning Scenario Tool (EPST) to develop the Correspondence Examination Starts Plan, which utilizes comparative scenarios to optimize the mix of inventory and available resources. EPST provides a weekly plan by Campus for opening additional examinations, with projected weekly mail receipts, to maintain a balanced and manageable mail inventory based on available staffing throughout the fiscal year.</p> <p>The plan is adjusted throughout the year to account for actual mail receipts, adding test inventory, changes in resources, program pauses/stoppage (e.g., COVID response), and system downtime and testing.</p>
TAS Response	<p>TAS appreciates the IRS's agreement to ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free telephone service, timely correspondence responses, and timely audit completion with the use of its EPST tool.</p> <p>Acknowledging that this tool has been in use since 2014, TAS notes that the W&amp;I and SB/SE correspondence audit toll-free telephone levels of service have consistently remained in the 40 and 60 percent ranges respectively, while significant overage correspondence responses continued throughout fiscal years 2016 through 2019. TAS looks forward to any recalibrations of the IRS's EPST that will serve to increase the levels of service on the correspondence audit toll-free telephones and improve the timeliness of correspondence responses and audit completion.</p>
TAS Recommendation	<p><b>[7-3] Expand TDC Secure Messaging capabilities to all correspondence audit programs.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation. In August 2020, SB/SE expanded TDC in Correspondence Examination to all five of its campuses. We plan to invite taxpayers from all TDC eligible audit types beginning in April 2021. Certain audit issues are not conducive to TDC (e.g. Non-filers, Criminal Investigation); therefore, those taxpayers will not be invited to participate. Due to budget constraints and continued challenges with taxpayers' ability to authenticate, the IRS is not expanding TDC to all 10 campuses at this time.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>TAS realizes that budget constraints and continued authentication challenges could hinder the IRS's ability to immediately expand TDC at this time. The current initiatives to invite taxpayers from all eligible TDC audit types in April 2021 is a step in the right direction. TAS looks forward to TDC expanding to all eligible audit types when feasible.</p>

**Most Serious Problem #8**

## **INTERNATIONAL: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS**

**PROBLEM**

The IRS's treatment of IRC §§ 6038 and 6038A foreign information reporting penalties as systemically assessable is legally unsupportable, administratively problematic, and imposes costs, delays, and stress for taxpayers. Because the penalties are immediately assessed, taxpayers' only recourse is to rely on IRS discretion and request a reasonable cause abatement of the penalties or pay them and seek a refund in federal court. This approach is particularly unsuited to these penalties, as demonstrated by abatement rates in excess of 55 percent when measured by number of penalties and 71 percent when measured by dollar value. Thus, both taxpayers and the IRS are expending significant time, energy, and money addressing penalties that ideally should not be assessed in the first instance.

**ANALYSIS**

IRC §§ 6038 and 6038A impose harsh penalties for failure to file required international information returns. Thus, the IRS's treatment of the penalties as summarily assessable is burdensome for taxpayers. The IRS adopts the circular argument that because it lacks statutory authority to assert the penalties using deficiency procedures, this, by definition, must confer authority to undertake summary assessments. The National Taxpayer Advocate and several commentators, however, find nothing in the IRC or the case law to support this reading. Given the existing hazards of litigation, the IRS should refer assessment and collection of these penalties to the Department of Justice, while seeking legislation providing authority to use the deficiency procedures. Administratively, the IRS could send soft notices to taxpayers upon discovery of late-filed international information returns to enhance compliance and minimizing the number of penalties being asserted. Further, the IRS should establish a first-time abatement for all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, to educate taxpayers and streamline tax administration.

**TAS RECOMMENDATIONS**

- [8-1] Stop erroneously assessing Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, and refer assessment and collection efforts to the Department of Justice when appropriate.
- [8-2] Send soft notices to taxpayers upon discovery of late-filed international information returns as a means of enhancing compliance and minimizing the number of penalties being asserted.
- [8-3] Extend eligibility for the first-time abatement to all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, regardless of whether the underlying return was filed late.
- [8-4] Expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.

## IRS NARRATIVE RESPONSE

While the U.S. income tax system is based on self-disclosure and self-assessment by taxpayers, there are inherent challenges with obtaining and verifying taxpayer information in the international context. Accordingly, Congress enacted statutory penalties in Internal Revenue Code (IRC) Chapter 61 for failure to timely file information returns relating to cross-border business activities. These information returns relate to both foreign taxpayers' activities and investments in the U.S. and U.S. taxpayers' activities and investments abroad. The IRS also utilizes the information in these annual returns to monitor and enforce tax compliance for other tax years and for other taxpayers (such as other shareholders or partners). The Treasury Inspector General for Tax Administration (TIGTA) recommended that the IRS consider systemic assessment of these penalties in 2006. After studying the issue further, the IRS began systemic assessment of some international information return penalties in 2009, and TIGTA evaluated IRS progress with implementing systemic assessment in 2013.

We disagree with the fundamental premise of the MSP that the IRS lacks legal authority to assess Chapter 61 penalties. The IRC provides two methods to assess penalties, either (1) pursuant to deficiency procedures or (2) as assessable penalties, that is, those penalties not subject to deficiency procedures. Penalties under Chapter 61, including IRC § 6038 and § 6038A, are meant to enforce reporting requirements and are not based on the tax shown on a return or the existence of a deficiency. As such, there is no legal basis for us to apply deficiency procedures to these penalties and the IRS has consistently treated Chapter 61 penalties as assessable.

IRC § 6201(a) provides the IRS authority to assess assessable penalties, that is, those penalties not subject to deficiency procedures. Neither that section nor the IRC in general limits assessable penalties to those described under IRC Subchapter 68B. To read the "Assessable Penalties" heading of that subchapter as the exclusive location of assessable penalties would be contrary to IRC § 7806, which expressly prohibits giving any legal effect to descriptive matter relating to the content of the IRC. Accordingly, there is authority to treat these penalties as immediately assessable, and the IRS is not required to first request that the Department of Justice file a suit to obtain a judgement for the penalties before collecting them.

The assessment of these penalties at filing, much like with other assessable penalties, provides the most equitable treatment of enforcement as it doesn't require the IRS to apply case selection criteria for examination. Meaning, all corporations and partnerships are held to the same standards of the law. The IRS recognizes the abatement rates for these systemically assessed penalties on corporations and partnerships are relatively high. We look forward to partnering with TAS to explore whether there are more efficient methods of administering these penalties while maintaining the equitable treatment afforded through systemic assessments.

## TAS COMMENTS ON IRS NARRATIVE RESPONSE

TAS agrees with the IRS regarding the importance of international information returns for tax administration and voluntary compliance. We understand that systemic assessment is sometimes the best and most equitable way to impose certain penalties for the IRS — but such is not always the case for taxpayers. When the majority of assessed penalties is ultimately abated, however, this indicates that other, more effective and efficient ways of seeking taxpayer compliance should be explored.

TAS looks forward to collaborating with the IRS to develop and implement programs and policies that drive compliance through communication and education. Such programs could include the issuance of soft letters prior to the assessment of penalties so that taxpayers have the opportunity to avoid penalties when they come into compliance. Also, if the IRS implemented a systemic first-time abatement for these penalties, this would represent a more streamlined and comprehensive version of what is already occurring as a practical matter for many systemically assessed IRC §§ 6038 and 6038A penalties. Both the soft letters and the systemic first-time abatement we recommend would present a means of generating compliance in a manner that preserves resources and reduces burdens for taxpayers and the IRS.

From a broader perspective, the National Taxpayer Advocate is unpersuaded by the IRS's legal argument that it has the right to assess these penalties. TAS concurs with the IRS that the IRC does not provide authority for the use of deficiency procedures with respect to Chapter 61 penalties. Nevertheless, the IRS has not provided any unambiguous statutory language or on-point judicial rulings based on which these penalties can be assessed.

IRC § 6201 simply states that assessable penalties can be assessed and the cases cited by the IRS only decide that penalties not subject to deficiency procedures do not require deficiency procedures.<sup>10</sup> These circumstances, either individually or in combination, cannot provide a basis for determining that Chapter 61 penalties are assessable in the first instance. The IRS primarily relies on the circular logic that just because the IRS cannot apply deficiency procedures, it therefore, by definition, must be able to resort to summary assessments. These are not either/or propositions, and the authority to assess is in no way conferred by the unavailability of deficiency procedures. Based on the National Taxpayer Advocate's reading of the law, and that of some commentators, the IRS simply has no ability to assess Chapter 61 penalties under the IRC as currently codified. This unfortunate and likely unintended situation is why assessment and collection of Chapter 61 penalties should be referred to the Department of Justice.

Although under current law, deficiency procedures do not apply to Chapter 61 penalties, we strongly recommend that Congress provide taxpayers with a statutory notice of deficiency giving them the opportunity to petition the U.S. Tax Court for reconsideration of the penalty. All taxpayers should have the chance to obtain judicial review of adverse IRS determinations. The IRS's position is that Chapter 61 penalties are assessable and not subject to judicial review unless a taxpayer is wealthy enough to first fully pay the penalties assessed and proceed to U.S. District Court or the U.S. Court of Federal Claims.

Long-term reliance on the Department of Justice for such enforcement is not an efficient and taxpayer-favorable long-term outcome. TAS welcomes the prospect of working with the IRS and Congress to seek legislation making Chapter 61 penalties subject to deficiency procedures. In the meantime, we look forward to collaborating with the IRS in pursuing our administrative recommendations that would yield a fair and just tax system for both taxpayers and the IRS.

<sup>10</sup> See *Wheaton v. U.S.*, 888 F. Supp. 622, 626 (D.N.J. 1995); *Heydemann v. United States*, 2008 WL 2502188 (D. Md. Apr. 23, 2008).

TAS Recommendation	<b>[8-1] Stop erroneously assessing Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, and refer assessment and collection efforts to the Department of Justice when appropriate.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation. We disagree the IRS lacks legal authority to assess Chapter 61 penalties. As previously stated, the Internal Revenue Code provides two methods to assess penalties, either (1) pursuant to deficiency procedures or (2) as assessable penalties, that is, those penalties not subject to deficiency procedures. Penalties under Chapter 61, including sections 6038 and 6038A, are meant to enforce reporting requirements, are not based on the tax shown on a return or the existence of a deficiency, and may be imposed even when the taxpayer has an overpayment. No court has ever ruled that the IRS lacks authority to assess these penalties without following deficiency procedures, and the IRS has consistently treated Chapter 61 penalties as assessable as far back as records are available.</p> <p>Further, the authority in section 6201(a) to assess “all taxes” is an expansive provision broad enough to include Chapter 61 penalties without regard to whether assessable penalties refers exclusively to penalties in Chapter 68B of the Code or had a broader meaning of penalties not subject to deficiency procedures.</p>
IRS Action	N/A
TAS Response	<p>The IRS's argument that it has the legal authority to assess Chapter 61 penalties is unpersuasive. TAS concurs that the IRC does not provide authority for the use of deficiency procedures with respect to these penalties. Beyond this negative proposition, the IRS does not provide any unambiguous statutory language or on-point judicial rulings regarding how Chapter 61 penalties can be properly assessed.</p> <p>IRC § 6201 simply states that assessable penalties can be assessed and the caselaw only stands for the proposition that penalties not subject to deficiency procedures do not require deficiency procedures. These circumstances, however, do not establish that Chapter 61 penalties are assessable in the first instance. The IRS primarily relies on the circular logic that just because the IRS cannot apply deficiency procedures, it therefore, by definition, must be able to treat these penalties as assessable. Nevertheless, the IRS fails to explain how the authority to assess is affirmatively conferred by its inability to proceed using deficiency procedures. The IRS seeks to create a false dichotomy, under which the lack of one right automatically gives rise to another. The National Taxpayer Advocate and some legal commentators, however, see nothing in the law giving the IRS the actual or implied authority to assess Chapter 61 penalties. This is why, in the absence of Congressional action, assessment and collection of Chapter 61 penalties must be referred to the Department of Justice.</p>
TAS Recommendation	<b>[8-2] Send soft notices to taxpayers upon discovery of late-filed international information returns as a means of enhancing compliance and minimizing the number of penalties being asserted.</b>

IRS Response	IRS does not agree to implement TAS recommendation. Generally, soft notices are used by the IRS to alert taxpayers to potentially non-compliant behavior, enabling them to take action to become compliant if applicable. Because section 6038 and 6038A filing requirements are event based, the IRS can't determine who has a requirement prior to the taxpayer filing the form, except in cases of direct taxpayer communication such as a field audit. As such, the IRS would be unable to identify missing forms in advance and send soft letters as an encouragement for compliance before assessing a penalty. These penalties are only systemically assessed after the taxpayer has resolved their non-filing issue by filing late. Sending a soft letter to the taxpayer, where there are no actions for them to take to rectify their non-compliance, would be confusing to taxpayers, may increase taxpayer burden, and would be a poor use of IRS resources. It would also be a disservice to taxpayers who make a concerted effort to understand their tax obligations and timely comply. Assessment of these penalties at filing, much like with other assessable penalties, provides the most equitable treatment of enforcement.
IRS Action	N/A
TAS Response	Pre-assessment correspondence could benefit both taxpayers and the IRS. We agree that the classic soft letter allowing for initial compliance as a means of avoiding a penalty would be inoperable in the instant case. The high rates of IRC §§ 6038 and 6038A penalty abatements, however, indicate that many of these penalties are being unnecessarily, and unjustifiably, assessed. One means of addressing this circumstance is to send correspondence, be it designated as a soft letter or something else, giving potentially impacted taxpayers the opportunity to explain why no penalty should be assessed in the first instance. This approach would contribute to the education of taxpayers and minimize the inefficient and burdensome practice of first assessing and then abating these penalties. Further, it would contribute to tax equity by placing the IRS in a better position to distinguish between good-faith mistakes and intentional tax noncompliance.
TAS Recommendation	<b>[8-3] Extend eligibility for the first-time abatement to all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, regardless of whether the underlying return was filed late.</b>
IRS Response	IRS does not agree to implement TAS recommendation. The IRS's policy of First Time Abatement (FTA) has only ever been applicable to the three common civil penalties: failure to file <sup>11</sup> , failure to pay, and failure to deposit. Information returns, both domestic and international, are not eligible.
IRS Action	N/A

<sup>11</sup> This includes delinquency penalties under sections 6651(a)(1), 6698, and 6699.



TAS Response	<p>A first-time abatement of Chapter 61 penalties is both possible and desirable. The IRS already allows an abatement of the IRC §§ 6038 and 6038A penalties whenever a related IRC § 6651 penalty receives a first-time abatement. In information provided to TAS by the IRS, it estimates that 40 percent of the abatements in this area are attributable to this practice. Because the first-time abatement is a matter of policy, the IRS is free to provide a broad first-time abatement for all Chapter 61 penalties and we continue to recommend the IRS abate these penalties through the first-time abatement procedures.</p> <p>This expansion would help to educate taxpayers and streamline tax administration. It would foster a better understanding of the law by taxpayers, facilitate information gathering by the IRS, and substantially decrease the number of penalties asserted. Good faith taxpayers would have their rights protected, while the IRS would still receive necessary information.</p>
TAS Recommendation	<b>[8-4] Expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.</b>
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

**Most Serious Problem #9**

## **AMENDED RETURNS: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year**

**PROBLEM**

In fiscal year (FY) 2019, the IRS's failure to set clear expectations and keep taxpayers informed of the status of their amended returns generated over 2.2 million calls, 1.4 million of which it was able to answer, and resulted in over 9,400 TAS cases. The IRS's published expected processing time for amended returns is 16 weeks. However, the IRS fails to advise taxpayers that if their amended returns are audited, processing will take significantly longer. One of the steps in the process, assigning an amended return that has been selected for audit to an examiner (who contacts the taxpayer) and opening the audit, alone took an estimated median of three to nine weeks for individual amended returns, and 14 to 16 weeks for corporate amended returns. Moreover, when taxpayers file an amended return to request a reduction in an assessed tax that remains unpaid, *i.e.*, a request for abatement, the IRS sometimes refuses to consider the claim and issues a form letter rejecting the claim without an adequate explanation to the taxpayer. Although the IRS has the authority to consider these claims, the form letter simply states the law does not allow a claim to reduce tax owed and instructs the taxpayer to pay the tax followed by another amended return.

**ANALYSIS**

An analysis of information on IRS databases shows that the estimated overall median processing time for individual amended returns that resulted in a refund was never more than four weeks overall when the return was not audited. However, when these amended returns were audited, the estimated median processing time stretched to 35 weeks in FY 2017, *i.e.*, these taxpayers waited over eight months to receive their refunds. Estimated median processing time for these amended returns decreased to 20 weeks in FY 2019, a significant improvement compared to FY 2017, but still 25 percent longer than taxpayers were told to expect.

For individual and corporate amended returns that were audited and resulted in no change, estimated median processing time in FY 2017 was 32 weeks for individuals and 47 weeks for corporations. By FY 2019, these estimated median processing times were 29 weeks for individuals and 37 weeks for corporations.

An analysis of TAS cases in which taxpayers filed an amended return to request a tax abatement shows that the IRS often — over 40 percent of the time — refused to consider the claim, giving as the only reason for not considering the claim that the law does not allow claims for abatements.

**TAS RECOMMENDATIONS**

- [9-1] Revise the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming

or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund.

- [9-2] If the IRS determines the taxpayer is not entitled to an abatement, issue a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals<sup>12</sup> for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases.
- [9-3] Remove any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C).
- [9-4] Revise the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
- [9-5] Identify and address the cause of lengthy examination times for amended returns.
- [9-6] Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
- [9-7] Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.
- [9-8] Revise the IRM and Form 1120X instructions to more accurately reflect the expected processing time for amended returns.

## IRS NARRATIVE RESPONSE

The IRS is committed to processing amended returns accurately and efficiently. On August 17, 2020, the IRS began receiving electronic Forms 1040X, Amended U.S. Individual Income Tax Return, which has been an important goal for the IRS and our industry partners for many years. Electronically filing a Form 1040X will reduce errors and decrease processing time. As of November 21, 2020, over 144,000 electronically filed amended returns have been accepted from 18 industry partners. Future upgrades will allow taxpayers to file an electronic amended return for the current and two prior years. And, although the IRS has been converting more complex paper amended returns into electronic Correspondence Imaging System (CIS) cases for years, we initiated a pilot process in October 2020 to convert less complex paper amended returns to CIS cases. If the pilot is successful streamlining our ability to work and resolve these cases, we plan to implement the process Servicewide.

We are making progress in reducing the Business Masterfile (BMF) amended return inventory that has increased due to the lapse in appropriations in 2019 and office closures due to COVID-19 in 2020. As of November 2020, the current BMF inventory is about 670,000 cases, down 20 percent from a peak

<sup>12</sup> See IRM 8.1.1.3.2, No Immediate Tax Consequence Cases (Oct. 1, 2016).

of 840,000 cases one year prior. We anticipate BMF amended return processing will increase once new employees are trained and are focused on this inventory.

Our efforts to ensure compliance with the tax laws extend to amended returns. Before determining whether to survey or examine an assigned claim for refund, examiners thoroughly review the return to identify large, unusual, or questionable items per IRM 4.10.2.3, In-Depth Pre-Contact Analysis, and evaluate the audit potential of the entire return, and possibly, for related returns for the same or other tax years. The examination is not limited to the issues raised in the claim for refund if there are other issues that warrant further consideration (IRM 4.10.11.2.4 and 4.10.11.3.3). Therefore, the effort and time required to examine an amended return can rise to the same level as in other examinations, although current data shows the cycle time for examinations on amended returns is lower than other examinations both in Field and Campus operations (269 days in fiscal year 2020 compared to 319 days for all examinations). The length of any audit is based on the unique facts and circumstances of each case, the timeliness of taxpayer responses to IRS letters, and may be affected by the need to balance competing priorities or extenuating circumstances such as disasters. To help expedite examinations, campuses began forwarding claims and assigning cases to the field electronically in July 2020.

We are always seeking to improve how we communicate with taxpayers and will consider how the “Where’s My Amended Return” tool could be improved in this regard, taking into account cost and competing IT priorities. We will also review and consider other recommendations provided by the National Taxpayer Advocate.

Some amended returns include requests for abatement of tax owed, before the tax is paid. Currently, we consider these requests where sufficient documentation is provided. We do so as a courtesy to taxpayers, to allow the Service to consider a claim even though the taxpayer has not paid the assessed tax that is due. We are working with the IRS Office of Chief Counsel to determine how best to address the concerns raised by the Advocate with our procedures in addressing requests for abatement that are incomplete.

## **TAS COMMENTS ON IRS NARRATIVE RESPONSE**

TAS understands that there are good reasons why amended returns may take almost as much time to audit as other returns. TAS looks forward to the improved processing times expected to result from electronic filing, electronic assignment of some cases that are assigned for exam, and scanning some paper returns so they are accessible in the CIS database. In any event, taxpayers should be given more realistic estimates of what the expected processing time will be; the IRM should be adjusted if the current 16 week expected processing time is no longer accurate, and the Where’s My Amended Return tool should be improved accordingly. The Form 1120X instructions should likewise be adjusted if the referenced processing time of three to four weeks is not accurate.

However, the IRS’s explanation for lengthy processing times for amended returns filed by businesses is not supported by the data in this report, which is based on operations for FYs 2017–2019. There was indeed a government shutdown due to a lapse of appropriations in FY 2019, as the IRS notes, but amended return processing times improved in FY 2019 compared to FYs 2017 and 2018. The COVID-19 pandemic affected IRS operations, but not until FY 2020.

The National Taxpayer Advocate appreciates the IRS's willingness to work with the IRS Office of Chief Counsel to better address requests for abatement. As with any other taxpayer request, the IRS should advise taxpayers when they need to submit additional information in order for their request to be considered. The blanket statement currently in use (that the law doesn't allow taxpayers to file a claim to reduce the tax owed) without further explanation is not appropriate and often confusing for taxpayers. Providing the taxpayer an administrative review or initiating a specific request for documentation prior to rejection should be standard procedures. The IRS should also consider permitting these taxpayers to appeal their cases to the Independent Office of Appeals rather than having to pay the tax the taxpayer believes is not due, then file another claim of refund, or bring a refund suit in order for the IRS to review their documentation. Taxpayers have the *right to pay no more than the correct amount of tax*, and the IRS should assist them with that determination.

TAS Recommendation	<b>[9-1] Revise the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We are currently working on Internal Revenue Manual (IRM) updates to remove the "no consider" process for tax abatements. We will emphasize the need to contact the taxpayer for any missing information and to fully consider the claim when the missing information is received. Complete claims will still be subject to all review processes.
TAS Response	The National Taxpayer Advocate is pleased that the IRS is revising the IRM to correct the procedures for handling requests for tax abatements. We look forward to reviewing the modified IRM.

TAS Recommendation	<b>[9-2] If the IRS determines the taxpayer is not entitled to an abatement, issue a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Based on our actions to remove the "no consider" process for tax abatements in response to Recommendation MSP 9-1, a 30-day letter process will no longer be needed as we will be providing the taxpayer an opportunity to provide the missing information without first paying the tax.
TAS Response	Even if the IRS improves the process for considering requests for tax abatements by removing the "no consider" process, taxpayers should still have the opportunity to seek review by the Independent Office of Appeals. The IRS response is misleading as the IRS does not agree to implement the TAS recommendation.

TAS Recommendation	<b>[9-3] Remove any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C).</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We are currently working with other internal functions to update the referenced letter after considering input relative to removing this paragraph. We will take appropriate actions based upon this effort.
TAS Response	We look forward to reviewing an updated version of Letter 916C.
TAS Recommendation	<b>[9-4] Revise the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We will revise the IRM in conjunction with the revisions referenced in our response to Recommendation MSP 9-1.
TAS Response	We look forward to reviewing the revised IRM.
TAS Recommendation	<b>[9-5] Identify and address the cause of lengthy examination times for amended returns.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.

IRS Action	<p>The Small Business/Self-Employed Division (SB/SE) reviewed the cycle time for examinations of amended returns as well as other returns selected for audits. The cycle time to conduct an examination on amended returns is lower than other examinations both in Field and Campus operations. When an amended return is examined, the scope is not necessarily limited to just the claim issue; therefore, the expectation of the amount of audit work needed to examine the return should be similar to a regular examination.</p> <p>The Large Business &amp; International Division (LB&amp;I) also reviewed cycle times for examinations of claims. For mid-sized corporations, there was an increase of a few months in cycle times for claims (other than claims that are statutorily subject to review by Congress' Joint Committee on Taxation), but that increase in cycle time is diminished as we move to cycle time for large corporations. Claims reviewed by the Joint Committee added around 8 months to the cycle time, which is expected due to the Joint Committee process.</p> <p>The timing of when a claim or amended return is received within the LB&amp;I examination cycle may impact how long it takes to resolve. The initial examination could be the result of the claim or an amended tax return being filed; the claim may be incorporated into an ongoing examination; or the claim may be received at the conclusion of the initial examination of a tax return. Examination teams fully apprise taxpayer corporations that an examination of issues raised by filing an amended return prior to or during the course of an audit will increase the length of time needed to conduct the examination.</p> <p>In summary, the length of any audit is based on the facts and circumstances of each case and may be impacted by the necessity to balance competing priorities as well as other extenuating circumstances such as disasters.</p>
TAS Response	<p>The IRS's response shows that it reviewed cycle times and has some ideas about what drives cycle time but does not agree to implement the TAS recommendation.</p>
TAS Recommendation	<p><b>[9-6] Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in full.</p>



## Appendix 1: IRS Responses to Administrative Recommendations

IRS Action	<p>We continually review and monitor all inventories, including the unaudited corporate amended returns. Multiple factors influence processing times each year, such as government shutdowns, legislation, available resources, and even nationwide pandemics. Each year, we tailor our efforts to address processing timeframes to the specific circumstances that have contributed to them. The circumstances surrounding our current situation include the following:</p> <ul style="list-style-type: none"> <li>• Historical data shows the 1120X receipts have not increased as compared to prior years, but closures were down considerably compared to the prior year. Both campuses assigned business (BMF) returns have validated that the CP80 inventory (for BMF taxpayers who make a payment but fail to file a return within six months after the return due date) did not contribute to the backlog of amended returns.</li> <li>• The BMF campuses were heavily impacted by the pandemic due to building closures, across the board staffing shortages, various systemic issues, and limited paper time because of phone demand. The two BMF campuses have about 720 Customer Service Representatives trained and working these cases and many other types of work, so they are spread between the various paper programs and phone lines.</li> <li>• We are expecting staffing increases from employees returning from Weather and Safety leave and about 200 new hires in the upcoming weeks. As a result, we should see improvements in the amount of staffing we can apply to this inventory.</li> <li>• The corporate amended inventory is portable and processed via Account Management Services/ Correspondence Imaging Services, so we are exploring options for in-office and telework employees to do this work. However, delays in working these cases are compounded by document requests not yet fulfilled due to Federal Records Center closures/staffing shortages. Increasing staffing will not help if we can't get the returns needed to work these cases.</li> </ul>
TAS Response	<p>The TAS analysis was based on the IRS's performance in FYs 2017-2019, before the onset of the pandemic, yet the IRS response primarily references problems created by the pandemic. The pandemic may have worsened the problem, but the problem was already evident. The IRS detailed response does not agree to implement the TAS recommendation.</p>
TAS Recommendation	<p><b>[9-7] Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation. Expanding "Where's My Amended Return" beyond its original use may provide inaccurate and/or confusing information to taxpayers, as all amended returns selected (or referred) for examination may not be audited. If an audit will be conducted on the amended return, taxpayers are notified in writing.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>It is unclear why taxpayers would be confused if they were informed that their amended return was selected for examination and may or may not be audited. Moreover, once an amended return is selected for examination, it is assigned to an examiner, who may decide to survey, rather than audit, the return. The IRS could inform taxpayers, for example, how long this step alone is currently taking.</p>

TAS Recommendation	<b>[9-8] Revise the IRM and Form 1120X instructions to more accurately reflect the expected processing time for amended returns.</b>
IRS Response	IRS does not agree to implement TAS recommendation. The current instructions for Form 1120X state, "It often takes 3 to 4 months to process Form 1120X." Wage and Investment confirmed that the timeframe for processing Form 1120X as stated is still accurate. Therefore, the instructions will not be updated. Processing time does not include the time expended if an amended return is selected for examination. Once a definitive decision is made to examine the assigned amended return, the taxpayer will be notified in writing.
IRS Action	N/A
TAS Response	Perhaps the IRS could simply adjust the current instructions to inform taxpayers that processing time does not include time expended if an amended return is selected for examination.

**Most Serious Problem #10****REFUND DELAYS: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds****PROBLEM**

The IRS issues most refunds promptly, but its pre-refund fraud filters delay millions of legitimate refund claims. In 2020, these filters flagged about 1.9 million returns for identity verification and 3.3 million to verify income and withholding. But the IRS ultimately issued most refunds requested on returns it flagged in calendar year 2019. Taxpayers whose refunds were delayed had trouble getting specific and timely information about the status their refunds.

**ANALYSIS**

For about 25 percent of the returns flagged by fraud filters, the IRS took longer than 56 days in 2020 to issue refunds, and for about 18 percent of those flagged for identity verification, refunds took longer than 120 days. In some cases, returns got stuck between functions (*e.g.*, between the Return Integrity Verification Operation and Exam). As of September 24, 2020, 20 percent of the returns processed in 2019 had still not reached the function — they were still sitting in transit between functions, which has caused an unacceptable delay.

When taxpayers called the IRS about their refunds or used the Where's My Refund tool on the IRS website or the IRS2go app, they could not get specific information about the cause of the delay, what the IRS needed, and when they could expect the refund. When they tried to verify their identities by uploading documents to the IRS's electronic system (called ID Verify), they were frustrated because they could not reach ID Verify without first going through the IRS's authentication protocol (called Secure Access). Most people who tried could not get through Secure Access in 2020. The inability to obtain specific information about their refunds combined with the economic burden caused by delays drove over 65,000 taxpayers to seek TAS assistance with pre-refund identity or income verification in 2020. And these delays are the number one reason that taxpayers asked TAS for help over the last three years.

**TAS RECOMMENDATIONS**

- [10-1] Offer taxpayers with refunds flagged during the fraud screening processes an electronic option that provides them with:
- a) More accurate estimates of when they can expect to receive a refund (*e.g.*, offer estimates before the refund is approved instead of just afterward);
  - b) What specific information the IRS needs to verify;
  - c) Whom the taxpayer can contact with questions; and
  - d) How to upload identity verification information (*e.g.*, by using a cell phone or camera) without first passing through Secure Access.
- [10-2] Make permanent the temporary procedures that allow taxpayers to submit identity verification documents by eFax, at least when other modes of communication are unavailable.

- [10-3] Upgrade IRS systems so the taxpayer is automatically informed of the status of his or her case when it moves to another treatment stream (*e.g.*, Examination) or when a case is automatically opened in those downstream functions, and so any authorized IRS employee can see the status of the case and related taxpayer correspondence.
- [10-4] Fund technology upgrades to expedite legitimate refund requests while continuing to modernize and replace obsolete IRS systems.
- [10-5] Update procedures so CSRs can provide specific information to taxpayers about how to expedite a refund (*i.e.*, identify a specific discrepancy) and ask that RIVO employees respond to the taxpayer's inquiry.
- [10-6] Measure and evaluate W&I's performance based on how many taxpayers with legitimate refunds its fraud filters flag and how many must wait more than 60 days to receive their refunds.

## IRS NARRATIVE RESPONSE

We appreciate your support of the IRS goals of detecting and mitigating refund fraud while working to decrease burden on taxpayers who have filed legitimate returns. Roughly 98% of refund returns are not selected by fraud filters. The remaining 2% often have reported information that may not adhere to known patterns and may not have the information returns needed to validate reported amounts.

Without proper validation, the IRS risks issuing improper refunds. In 2019, the Taxpayer Protection Program (TPP) identity theft (IDT) filters protected \$2.5 billion in revenue and Return Review Program (RRP) Non-IDT filters protected \$1 billion in revenue.

We understand the concerns of how refund delays can impact taxpayers, and we continue to collaborate with internal and external partners, including the Taxpayer Advocate Service, to refine and automate refund fraud filters where appropriate. Each year, we consider several factors to make the most efficient selections and improve performance while continuing to achieve our high level of protection:

- **Measure and monitor:** The IRS added new metrics to reports of IDT and Non-IDT selections to track the resolution timeframe for false-positives to ensure no significant increase in process times.
- **Improve model selection through advanced analytics:** The IRS refreshes RRP models and filters for IDT and Non-IDT annually. The IRS reviews and updates dependent database filters annually to improve performance. We are also testing other selection approaches to determine effectiveness.
- **Improve case processes through automation:** The IRS conducted a significant overhaul of the RRP Non-IDT and systemic verification process to automate verification and processing of returns. Instead of scoring returns once at filing, the IRS is now re-scoring returns every time new third-party data is received and moving the case to the right process status instead of waiting for a manual verification. We are seeking updates to our technology and evaluating other ways to further improve these processes.
- **Improve taxpayer communications:** For 2020, all returns held in TPP for more than 90 days were scheduled for a second notice. Due to resources impacted by COVID-19, the secondary letter process was on hold until October 2020. Non-IDT selections were scheduled for interim notice every 60 days.
- **Leverage third-party data:** In 2018, the IRS began a pilot with the Bureau of the Fiscal Service (BFS) to determine if bank account information on a TPP return can be validated by BFS (a process also used

for other agency payments). Based on the 2019 preliminary results, the IRS sent a secondary notice to taxpayers with matching accounts after 45 days of no response. During 2020, because of COVID-19, returns with matching bank information were immediately released from TPP.

Due to COVID-19, taxpayers experienced significant delays in the return process because of the closure of IRS sites and processes. The IRS worked to mitigate these delays by resolving as many cases (including IDT inventory) as possible using available resources and data. As of November 2020, the IRS has not closed any cases due to no response from taxpayers, and will continue to extend the timeline to allow taxpayers to resolve their issues quickly once they are able to contact the IRS.

## TAS COMMENTS ON IRS NARRATIVE RESPONSE

We all agree that IDT and non-IDT screens help protect taxpayers and the government, and that most taxpayers receive their refunds without delay. But a substantial number of taxpayers whose legitimate refunds are delayed by the IRS's screening process do not know the reason for the delay. TAS appreciates RIVO's ongoing efforts to (1) track the resolution timeframe for false-positives, (2) improve return selection through advanced analytics, (3) rescore returns every time new third-party data is received, (4) send more regular notices to taxpayers whose refunds are delayed, and (5) leverage more third-party data, such as bank account information that can be validated by BFS. These activities should help reduce false positives, speed the release of legitimate refunds, and improve customer service. However, the IRS needs to take additional steps to fully address these problems and provide more transparency to taxpayers whose refunds are being held and a status update regarding the timing of the pending determination.

TAS Recommendation	<p><b>[10-1] Offer taxpayers with refunds flagged during the fraud screening processes an electronic option that provides them with:</b></p> <ul style="list-style-type: none"> <li>a) <b>More accurate estimates of when they can expect to receive a refund (e.g., offer estimates before the refund is approved instead of just afterward);</b></li> <li>b) <b>What specific information the IRS needs to verify;</b></li> <li>c) <b>Whom the taxpayer can contact with questions; and</b></li> <li>d) <b>How to upload identity verification information (e.g., by using a cell phone or camera) without first passing through Secure Access.</b></li> </ul>
IRS Response	<p>IRS agrees with TAS recommendations but cannot implement them currently due to funding limitations.</p>
IRS Action	<ul style="list-style-type: none"> <li>a) We have submitted Unified Work Requests (UWRs) to request programming to update the Where's My Refund tool to provide taxpayers more specific responses based on the reason their return was flagged for review. However, the UWRs are subject to funding limitations and competing priorities.</li> <li>b) During the initial hold we place on returns during the fraud screening process, we do not ask the taxpayer to provide any information because we are awaiting third party data to be provided by the employer. We will submit a UWR to request programming to provide taxpayers a message in Where's My Refund that the return is being reviewed and they will be sent a letter if specific documentation is needed. If the return is moved to a treatment stream, we send the taxpayer a letter asking for the specific information needed to resolve their account.</li> </ul>

Appendices	IRS Action (continued)	<p>c) The IRS agrees that keeping taxpayers informed of their case status is important; however, with our systemic Questionable Return Program process, we are unable to identify specific contact information regarding the site or employee at that time.</p> <p>UWRs have been submitted to update Where's My Refund to provide more specific responses based on the reason a return is flagged and direct the taxpayer to the proper telephone line. (e.g., if there is a delay due to Taxpayer Protection Program (TPP) filters, the taxpayer is referred to the TPP line, or if there is a delay due to a Return Integrity/Verification hold, the taxpayer is referred to the toll-free line.) The UWRs have been denied due to funding limitations. Our letters to taxpayers do provide a contact number to call for additional assistance. In addition, the Wage and Withholding and Automated Questionable Credit letters also provide an eFax number the taxpayer can use to submit their supporting documentation electronically.</p> <p>d) We continually explore ways to improve the overall taxpayer experience and the authentication process. For example, we are aggressively looking at ways for taxpayers to digitally transmit documents to the IRS. Specifically, we are exploring a capability that may allow taxpayers to send unsecured information that could be uploaded via irs.gov. This capability is still in the research phase, but we are excited about the potential of this feature and how it will improve the taxpayer experience.</p>
	TAS Response	<p>a) TAS is pleased that the IRS agrees to update its Where's My Refund tool to provide more accurate estimates of when taxpayers can expect a refund. TAS understands there are funding constraints and competing priorities that affect when such updates may be available but continues to advocate for prioritizing this project, allowing for the implementation of such upgrades.</p> <p>b) TAS is encouraged that the IRS has agreed to submit a request to modify the Where's My Refund tool to inform taxpayers that their return is being reviewed and they will receive a letter if more information is needed. This change will better observe the taxpayer's <i>right to be informed</i>. Additionally, these changes may have the added benefit of reducing taxpayer phone calls inquiring as to when they can expect their refunds.</p> <p>c) TAS appreciates that a request was submitted to update the Where's My Refund tool to provide more specific responses based on the reason a return is flagged and direct telephone numbers to the proper IRS telephone lines that taxpayers should call for more specific information. We are disappointed to hear that this request has been denied and ask the IRS to reconsider our proposal. We understand that the IRS provides contact numbers on its notices but including this information on the Where's My Refund tool would be yet another way taxpayers would know whom to contact regarding the status of their refunds.</p> <p>d) TAS is encouraged by the IRS's continued interest in providing modern options by which taxpayers can submit documents to the IRS. The IRS's continued efforts to leverage modern technology will ultimately improve the taxpayer experience when interacting with the IRS and will likely promote voluntary compliance. TAS looks forward to continuing to work with the IRS to develop systems that offer more technologically advanced capabilities.</p>
	TAS Recommendation	<b>[10-2] Make permanent the temporary procedures that allow taxpayers to submit identity verification documents by eFax, at least when other modes of communication are unavailable.</b>
	IRS Response	IRS agrees to implement TAS recommendation in part.
	IRS Action	We will continue to assess the availability and status of in-person and telephone communication channels and continue to provide the eFax option as appropriate.

## Appendix 1: IRS Responses to Administrative Recommendations

TAS Response	TAS is encouraged that the IRS appears to be open to further extending the eFax option for taxpayers to submit documentation. Continuing to offer this option for taxpayers to upload documents while the IRS continues to explore and develop technology that will allow taxpayers to upload documents electronically is yet another way by which the IRS can improve the taxpayer experience.
TAS Recommendation	<b>[10-3] Upgrade IRS systems so the taxpayer is automatically informed of the status of his or her case when it moves to another treatment stream (e.g., Examination) or when a case is automatically opened in those downstream functions, and so any authorized IRS employee can see the status of the case and related taxpayer correspondence.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<p>We are transitioning to an Enterprise Case Management (ECM) system, the benefits of which include allowing authorized IRS employees to gain the ability to see an individual taxpayer's entire range of issues, relevant case data, and communications to effectively resolve cases. As a result, IRS representatives will be able to resolve more inquiries in a single contact and identify when a taxpayer is already working with another employee to facilitate handoffs, thus improving the overall taxpayer experience.</p> <p>The ECM multiyear enterprise solution aims to support the goals of the IRS Integrated Modernization Business Plan by consolidating more than 60 systems into a single platform. This will enable authorized IRS employees a real-time, 360-degree view of a taxpayer's history, relevant case data, and prior communications to more quickly resolve cases. IRS Information Technology (IT) is transforming delivery of ECM by using a commercial off-the-shelf (COTS) platform and cloud computing strategy. This facilitation of case resolution and improved customer service is also crucial in the IRS's objective of putting taxpayers first. ECM Release 1 went into production at the end of calendar year 2020, providing IT and business foundational capabilities as well as case management capabilities for the Tax Exempt &amp; Government Entities (TE/GE) Exempt Organizations Customer Service group. Subsequent releases will deliver case management capabilities to a widening circle of business units across the IRS. The ECM Program has developed a sequencing strategy and release plan structure to support the delivery of future ECM releases for FY 2021 and beyond.</p>
TAS Response	The IRS's move toward a more modern system, which brings a number of IRS systems under one large umbrella, will allow more access to taxpayer information to each IRS function, thereby providing the IRS enhanced capabilities in helping taxpayers resolve their outstanding tax issues. Although this is a significant undertaking, and full implementation is still years in the future, it is encouraging that the IRS is closer to making this improved system a reality to improve tax administration and taxpayer service.
TAS Recommendation	<b>[10-4] Fund technology upgrades to expedite legitimate refund requests while continuing to modernize and replace obsolete IRS systems.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.



IRS Action	We continue to invest significant sums in the technology used for screening, verifying, and processing both ID theft and non-ID-theft (e.g., wage verification) pre-refund cases. This includes advanced analytics to improve our filters and selections, case process automation, data matching improvements, and tools for taxpayers to provide additional information and transparently view the status of their refund. As resources are available, the IRS will take additional steps to expedite legitimate refund requests and modernize the systems involved in this process. In the future state, the IRS's Enterprise Case Management system will meet many of the requirements that the National Taxpayer Advocate highlights — including accepting scanned or electronic information from taxpayers and employers, systemic referrals between functions, automated workflows to release refunds and communicate with other systems, and integrations between information return systems, fraud systems, and correspondence systems to reduce manual entry and procedures.
TAS Response	Although the process to update IRS systems is long and arduous, the National Taxpayer Advocate is encouraged that the IRS continues to take steps toward implementation of this modernization plan and believes that advances such as allowing taxpayers to upload documents electronically will improve taxpayer interactions with the IRS, ultimately resulting in taxpayers getting their refunds faster and having their issues resolved quicker.

TAS Recommendation	<b>[10-5] Update procedures so CSRs can provide specific information to taxpayers about how to expedite a refund (i.e., identify a specific discrepancy) and ask that RIVO employees respond to the taxpayer's inquiry.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The Systemic Verification process will automatically release the refund once the return information is verified. Systemic Verification relies on Information Return Processing data, which can change daily. It is dependent on the timeliness of the third-party employers submitting their Form W-2, Wage and Income Statement, documentation. Since the COVID-19 pandemic, we have updated several sections of the Internal Revenue Manual with instructions for the CSR to provide the taxpayer with an eFax number to send their documentation, which could assist in releasing the refund quicker.
TAS Response	TAS is in full agreement that systemic processes are an efficient way to administer the refund fraud program, ultimately resulting in a faster release of refunds. Despite systemic processing improvements, taxpayers are all too often unable to obtain information from CSRs regarding the status of their refund and what they need to do to expedite the refund. TAS once again encourages the IRS to reconsider its current procedures and provide CSRs with as much information as possible regarding the status of taxpayer refunds and what taxpayers need to do to assist in its release. In addition, RIVO should establish procedures for its employees to respond directly to taxpayers upon receipt of a referral from another IRS function, outside of the current process to issue an interim letter requesting additional time for review.

TAS Recommendation	[10-6] Measure and evaluate W&I's performance based on how many taxpayers with legitimate refunds its fraud filters flag and how many must wait more than 60 days to receive their refunds.
IRS Response	<p>IRS does not agree to implement TAS recommendation. Roughly 98% of refund returns are not selected by fraud filters. The remaining 2% often have reported information that may not adhere to known patterns and may not have the information returns needed to validate reported amounts. Without proper validation, the IRS risks issuing improper refunds.</p> <p>We understand the concern of how refund delays can impact taxpayers and strive to balance this concern against the risk of issuing improper refunds. To this end, the IRS continually evaluates changes in the tax system and makes improvements to our refund fraud detection methods, including refining our filters. We continue to improve the filters using a variety of methodologies, algorithms, data sets, and techniques to help stay ahead of fraudsters. We evaluate and monitor the performance of each filter on a weekly basis and adjust filters that are not performing as expected. We apply lessons learned from confirmed cases and consider emerging trends. We will continue to rebuild and refresh our filters and models each year to better detect emerging schemes, taking into account historical patterns.</p>
IRS Action	N/A
TAS Response	<p>TAS understands the IRS's concerns regarding the issuance of improper refunds. However, if information on the return cannot be verified, it is important for the IRS to monitor how long these refunds are being held until the IRS makes a decision on how to proceed (<i>i.e.</i>, release the refund or transfer the return to one of the IRS's treatment streams for assignment). While it is not appropriate to issue refunds where the information on the return cannot be validated, it is equally unacceptable to hold refunds in perpetuity. The IRS, while holding a case in suspense and awaiting the next compliance action, needs to keep the taxpayer informed and track the amount of time the case is being held.</p>

**Most Litigated Issue #1****Appeals From Collection Due Process Hearings Under IRC §§ 6320 and 6330****PROBLEM**

A Collection Due Process (CDP) hearing is an opportunity for a taxpayer to have an independent and meaningful review by the IRS Independent Office of Appeals (Appeals) prior to the IRS's first levy or immediately after its first Notice of Federal Tax Lien (NFTL) filing to enforce a tax liability. At the hearing, the taxpayer has the right to raise any relevant issues related to the unpaid tax, the lien, or the proposed levy, including the appropriateness of the collection action, collection alternatives, spousal defenses, and, under certain circumstances, the underlying tax liability.

Once Appeals issues a determination, a taxpayer has the right to judicial review of that determination if the taxpayer timely requests a CDP hearing and timely petitions the U.S. Tax Court. Generally, the IRS suspends levy actions during a levy hearing and any subsequent judicial review of the Appeals determination that follows the hearing.

CDP has been one of the federal tax issues most frequently litigated in the federal courts since 2001; however, only a small fraction of eligible taxpayers exercises their right to an administrative hearing, and far fewer taxpayers petition the Tax Court to review their case.

Our review of litigated issues found 74 opinions on CDP cases during the review period of June 1, 2019, through May 31, 2020. Taxpayers prevailed in full in five of these cases (seven percent) and, in part, in five others (about seven percent). Forty-five taxpayers (61 percent) appeared *pro se* (unrepresented). Cognizant of the distinct disadvantage that *pro se* litigants face, federal courts routinely read their submissions liberally and interpret them to raise the strongest arguments that they suggest. The IRS prevailed fully in 64 cases (about 86 percent) of the opinions.

**TAS RECOMMENDATIONS**

- [MLI 1-1]** Use internal data pertaining to a taxpayer's income and assets compared to his or her Allowable Living Expenses to determine if a taxpayer is in economic hardship or qualifies for a collection alternative, such as an offer in compromise, prior to issuing an intent to levy notice or NFTL.<sup>13</sup> Working with taxpayers ahead of time could negate the need for further collection action.
- [MLI 1-2]** Revise CDP notices so that the CDP hearing aspect is a separate notice from the collection portion of the notice. Provide the taxpayer an understanding of what a CDP hearing is and why a taxpayer would want to request a CDP hearing.

<sup>13</sup> See National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*); National Taxpayer Advocate 2019 Annual Report to Congress 89-96 (Most Serious Problem: *Offer in Compromise: The IRS's Administration of the Offer in Compromise Program Falls Short of Congress's Expectations*).

TAS Recommendation	<b>[MLI 1-1] Use internal data pertaining to a taxpayer's income and assets compared to his or her Allowable Living Expenses to determine if a taxpayer is in economic hardship or qualifies for a collection alternative, such as an offer in compromise, prior to issuing an intent to levy notice or NFTL. Working with taxpayers ahead of time could negate the need for further collection action.</b>
IRS Response	<p>Consistent with sections 6320 and 6330 of the Internal Revenue Code, the IRS provides taxpayers with notice of, and an opportunity for, a Collection Due Process (CDP) hearing after a Notice of Federal Tax Lien (NFTL) is filed and before a notice of levy is issued. Letter 3172 is the CDP notice of the NFTL filing, and Letter 1058 or Letter LT11 is the CDP notice of the intent to levy.</p> <p>CDP notices are not automated notices, but rather are issued after we have mailed several automated notices and the account has remained unresolved. We then analyze the case (using data such as the taxpayer's income) to decide if it is a high priority and should be assigned to a Collection function. The assigned Collection function then attempts to contact the taxpayer and makes the determination that issuing the CDP notice is the appropriate next action because the taxpayer has not responded, or they have been unable to resolve the case. At the point that we issue the <i>Notice of Intent to Levy and Your Right to a Hearing</i> or initiate the filing of the NFTL, therefore, we have already provided the taxpayer an opportunity to work with us on collection alternatives. Accordingly, we do not agree to implement TAS Recommendation MLI #1-1.</p>
IRS Action	N/A
TAS Response	TAS appreciates the work that goes into determining if the IRS should issue an intent to levy notice or an NFTL. However, the current analysis focuses on if the case should be pursued, if the taxpayer has responded, etc. We recommend that the IRS use internal data not to categorize the case for collection potential but to flag cases that would make good candidates for hardship identification or collection alternative, regardless of involvement with the taxpayer up to that point. For instance, flagged cases for hardship could avoid receipt of an intent to levy notice or an NFTL. Predetermining the appropriate collection alternative would put data to use that may already be available, thereby saving resources and ensuring the <i>right to quality service</i> .

TAS Recommendation	<b>[MLI 1-2] Revise CDP notices so that the CDP hearing aspect is a separate notice from the collection portion of the notice. Provide the taxpayer an understanding of what a CDP hearing is and why a taxpayer would want to request a CDP hearing.</b>
IRS Response	<p>The CDP notices have been revised several times throughout their 21-year history, with the concurrence of TAS, to enhance their clarity and incorporate modifications to the law.</p> <p>In response to a prior year TAS recommendation, the IRS partnered with TAS to redesign a number of collection notices, including Letters 1058 and LT11. We created a new heading in the Letter 1058 to explain CDP hearing rights ("How to Request an Appeals Hearing"), and we bolded key concepts and due dates for submission of these requests. The re-designed LT11 similarly features a separate section titled "How to Request an Appeals Hearing," with key due dates highlighted. We tested several prototypes of the LT11 and will place the revised version into production this year.</p> <p>One of the goals of this notice redesign initiative was to better enable taxpayers to make an informed choice as to their options. Our tests of the redesigned LT11 showed that more taxpayers paid their liabilities and a higher percentage of taxpayers requested CDP Hearings. The goal of informed choice is being met by our current practices and the structure of our notices. Therefore, we decline to further redesign or restructure our CDP notices.</p>

IRS Action	N/A
TAS Response	<p>TAS values the opportunity to work with the IRS to revise CDP notices. The IRS has adopted several of TAS's recommendations, which will help taxpayers. However, we believe combining CDP rights with a collection notice complicates an already confusing process for taxpayers, and highlighting new subheadings does not remedy this. The revisions, which TAS acknowledges as improvements from the prior versions, remain within the context of a demand for payment, which seems to overshadow the importance of the notice that grants the taxpayers' one-time right to request a CDP appeal. The separate CDP notice should explain what a CDP appeal is and why a taxpayer would want to request one. In lieu of a separate CDP notice, we agree that the IRS's recent changes will mitigate some taxpayer confusion.</p>

**Most Litigated Issue #3****Accuracy-Related Penalty Under IRC § 6662(b)(1) and (b)(2)****PROBLEM**

The accuracy-related penalty may be imposed if the taxpayer's negligence or disregard of rules or regulations causes an underpayment of tax required to be shown on the taxpayer's return, or if an underpayment exceeds a computational threshold called a substantial understatement. The accuracy-related penalty does not apply to any portion of an underpayment where the taxpayer acted with reasonable cause and in good faith. Additionally, the supervisor of the employee making the penalty determination generally must provide written approval of the accuracy-related penalty before the "initial determination of such assessment."

Much of the accuracy-related penalty litigation this year and in previous years has focused on either whether the taxpayer met the reasonable cause exception or whether the IRS failed to secure timely supervisory approval. Still, the overall number of accuracy-related penalty cases has been declining. We identified only 64 opinions issued between June 1, 2019, and May 31, 2020, where taxpayers litigated the negligence or substantial understatement components of the accuracy-related penalty.

**TAS RECOMMENDATIONS**

- [MLI 3-1] Issue regulatory guidance to clarify that the supervisory approval under IRC § 6751(b) must occur prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.
- [MLI 3-2] Update its IRM to clarify that where the IRS uses a computer program to determine the accuracy-related penalty based on negligence, an IRS employee must first contact the taxpayer and review the facts and circumstances prior to determining the applicability of the negligence penalty and the IRS must obtain supervisory approval to ensure the penalty is appropriate prior to assertion of the penalty, consistent with the Memorandum from Director, Examination Field and Campus Policy, to Area Directors, Field Examination, SBSE-04-0920-0054 (Sept. 24, 2020).
- [MLI 3-3] Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate *prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.*
- [MLI 3-4] Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the negligence penalty under IRC § 6662(b)(1).

TAS Recommendation	<b>[MLI 3-1] Issue regulatory guidance to clarify that the supervisory approval under IRC § 6751(b) must occur prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.</b>
IRS Response	The IRS agrees to implement TAS recommendation in part.
IRS Action	<p>Over the last few years, the IRS has focused on ensuring our processes and procedures accurately reflect when supervisory approval is necessary for all examination programs. We appreciate that the National Taxpayer Advocate (NTA) recognized our efforts, noting in her report the significant decrease from last year in court opinions where taxpayers prevailed due to an IRS failure to comply with supervisory approval requirements.</p> <p>The IRS sends a written communication to the taxpayer proposing the penalty as an adjustment, the IRS agrees to implement the recommendation in part. The Department of the Treasury 2020-2021 Priority Guidance Plan issued November 17, 2020, lists proposed regulations regarding supervisory approval of proposed penalties as among the guidance projects that will be the focus of efforts of the Department of the Treasury, the IRS, and the IRS Office of Chief Counsel during the 12-month period from July 1, 2020, through June 30, 2021. The ultimate rules imposed by final regulations are not predetermined. The views of many stakeholders will be considered, including public comments received on any proposed regulations.</p>
TAS Response	TAS appreciates that the IRS is prioritizing guidance on the supervisory approval requirement during the current fiscal year. We hope this guidance will be included on the following fiscal year's plan if the proposed guidance is not published for public comment this fiscal year.
TAS Recommendation	<b>[MLI 3-2] Update its IRM to clarify that where the IRS uses a computer program to determine the accuracy-related penalty based on negligence, an IRS employee must first contact the taxpayer and review the facts and circumstances prior to determining the applicability of the negligence penalty and the IRS must obtain supervisory approval to ensure the penalty is appropriate prior to assertion of the penalty, consistent with the Memorandum from Director, Examination Field and Campus Policy, to Area Directors, Field Examination, SBSE-04-0920-0054 (Sept. 24, 2020).</b>
IRS Response	The IRS disagrees with TAS's recommendation to require, where the IRS uses a computer program to determine the accuracy-related penalty based on negligence, that employees contact the taxpayer and review the facts and circumstances prior to determining the applicability of the negligence penalty and obtain supervisory approval prior to asserting it. The IRS's procedures for penalties assessed using a computer program are in accordance with current law and regulations and with sound tax administration. Internal Revenue Code (IRC) section 6751(b)(2) provides that managers need not approve any penalties automatically calculated (assessed without an employee independently determining the appropriateness of the penalty) through electronic means. The NTA's report also acknowledges the 2020 decision in which the Tax Court found the IRS did not have to obtain supervisory approval because the penalty was automatically calculated through electronic means.



IRS Response (continued)	<p>The IRS uses a computer program to determine the accuracy-related penalty based on negligence for the Automated Underreporter (AUR) program. AUR matches taxpayer income and deductions submitted by third parties such as banks, brokerage firms and other payers on information returns (e.g. Form 1099, Form W-2) against amounts reported on individual income tax returns. The IRS Office of Chief Counsel has advised, citing Treas. Reg. 1.6662-3(b)(1)(i), that negligence is strongly indicated where a taxpayer fails to include on an income tax return an amount of income shown on an information return. Based on this opinion, we believe the AUR program would not need to discuss any additional facts and circumstances with the taxpayer prior to determining the applicability of the negligence penalty.</p> <p>Nonetheless, Internal Revenue Manual (IRM) 20.1.5.2.3, Supervisory Approval of Penalties — IRC 6751 Procedural Requirements, provides that if a taxpayer submits a response, written or otherwise, that challenges the penalty or the amount of tax to which the penalty is attributable, written supervisory approval is required before the issuance of any Statutory Notice of Deficiency that includes the penalty. This IRM section further provides: “[t]he exception for penalties automatically calculated through electronic means no longer applies once a Service employee makes an independent determination to pursue a penalty or to pursue adjustments to tax for which a penalty is attributable.”</p>
IRS Action	N/A
TAS Response	<p>TAS is disappointed the IRS will not reconsider its policy of imposing the negligence portion of the accuracy-related penalty based on a single indicia of negligence, without any analysis of the surrounding facts and circumstances that would weigh against the negligence determination. The IRS’s use of electronic means to determine negligence deprives taxpayers of the protection provided by IRC § 6751(b). The related legislative recommendation included in the 2020 Annual Report to Congress explains situations where a taxpayer may not have acted negligently, notwithstanding unreported income from an information return for a second year. The IRS’s insistence on asserting the negligence penalty based solely on a computer program will continue to infringe taxpayers’ <i>rights to a fair and just tax system and to pay no more than the correct amount of tax.</i></p>
TAS Recommendation	<p><b>[MLI 3-3] Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate <i>prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.</i></b></p>
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

TAS Recommendation	[MLI 3-4] Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the negligence penalty under IRC § 6662(b)(1).
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

## Most Litigated Issue #6

## Summons Enforcement Under IRC §§ 7602, 7604, and 7609

## PROBLEM

TAS used commercial legal research databases to identify 40 federal opinions issued between June 1, 2019, and May 31, 2020, involving IRS summons enforcement and related issues. Of these 40 opinions reviewed, seven cases applied the standards for summons enforcement set forth in *United States v. Powell*, five cases involved the assertion of a privilege by the taxpayer, and two cases involved the issuance of a John Doe summons under IRC § 7609(f) (where the taxpayer(s) under investigation is not specifically identified or is unknown). Furthermore, six of the 40 cases were appeals decided by a United States Court of Appeals. Twenty-nine of the opinions involved individual taxpayers, while 11 involved business taxpayers. The government filed a petition to enforce the summons in 19 cases, while the taxpayer initiated by filing a petition to quash the summons in 21 cases. Overall, no taxpayers fully prevailed, but one case resulted in a partial taxpayer win with a split decision.

In fiscal year (FY) 2020, at least 433 summons cases were in the Office of Chief Counsel's inventory. A total of 34 cases were referred to DOJ in FY 2020. Subtracting those 34 from the total inventory means that 399 cases were handled by U.S. Attorneys' Offices. Many summons are complied with and do not require court enforcement (as demonstrated by the relatively small number of summons enforcement cases TAS identified for the period June 1, 2019, through May 31, 2020).

## TAS RECOMMENDATIONS

- [MLI 6-1] Revise its third-party contact letters and internal guidance, including updated Letter 3164-A,<sup>14</sup> to inform the taxpayer of what the IRS needs and to give the taxpayer a reasonable opportunity to provide the information before contacting third parties.
- [MLI 6-2] Amend IRC § 7602(c)(1) to require the IRS to tell the taxpayer in third-party contact notices what information it needs (if any) and give the taxpayer a reasonable opportunity to provide the information before contacting a third-party, unless an exception applies.<sup>15</sup>

TAS  
Recommendation

[MLI 6-1] Revise its third-party contact letters and internal guidance, including updated Letter 3164-A, to inform the taxpayer of what the IRS needs and to give the taxpayer a reasonable opportunity to provide the information before contacting third parties.

14 The IRS will send IRS Letter 3164-A, Third Party Contact (Jan. 1999), to notify taxpayers that the IRS may contact third parties to obtain information during the audit process. An IRS employee who issues Letter 3164 must wait ten days before contacting a third party under the Internal Revenue Manual 25.27.1.3.1.7, TPC Notification Procedures (Oct. 19, 2017).

15 National Taxpayer Advocate 2021 Purple Book, Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 137-138 (*Require the IRS to Specify the Information Needed in Third-Party Contact Notices*).

IRS Response	<p>Our procedures for contacting third parties balance taxpayers' and third parties' expectations of privacy with what is needed for effective tax administration. The Taxpayer First Act of 2019 (TFA) changed the notification requirements in the Internal Revenue Code, and specified the timing and required content of the advance notice of third-party contacts. The IRS timely implemented this TFA provision to ensure our employees appropriately follow the revised requirements.</p> <p>IRS employees are directed to first attempt to obtain information voluntarily from taxpayers and witnesses prior to issuing a summons, and not to issue a summons if the desired documents are available from IRS records. They resort to serving a summons if the records are not provided, or if the records provided are incomplete. See generally IRM 25.27.1.</p> <p>More specifically, the IRS requests information from taxpayers through telephonic, face-to-face, or written communication prior to contacting third parties for the information. Functional areas are required to document their contact with taxpayers and outline the specific actions needed. Field Collection utilizes Form 9297, Summary of Taxpayer Contact, and Field Examination utilizes Form 4564, Information Document Request, to request the information from the taxpayer needed in connection with the determination or collection of a tax liability. If the taxpayer complies with the request, IRS contact with a third party may be unnecessary.</p> <p>When we must contact a third party, we adhere to the relevant provisions of the law and regulations. We provide advance notice of the intent to contact third parties 45 days prior to making contact with any third party; we record each contact (unless an exception applies); and we provide a list of contacts to the taxpayer upon request.</p> <p>The IRS is sensitive to the concerns of harm to individuals or damage to businesses' reputations. Our procedures already promote open communication with taxpayers to gain their cooperation, and provide taxpayers with ample opportunity to voluntarily provide the information. Accordingly, we do not agree to implement TAS's recommendation.</p>
IRS Action	N/A
TAS Response	Although we appreciate the IRS response, the IRS can do more in this arena to inform taxpayers of what it specifically needs, such as updating internal guidance and taxpayer correspondence letters, including Letter 3164-A, to allow time for taxpayers to respond to specific IRS requests and to reduce summons enforcement challenges.

TAS Recommendation	<b>[MLI 6-2] Amend IRC § 7602(c)(1) to require the IRS to tell the taxpayer in third-party contact notices what information it needs (if any) and give the taxpayer a reasonable opportunity to provide the information before contacting a third-party, unless an exception applies.</b>
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

**Most Litigated Issue #7****Failure to File Penalty Under IRC § 6651(a)(1), Failure to Pay an Amount Shown as Tax on Return Under IRC § 6651(a)(2), and Failure to Pay Estimated Tax Penalty Under IRC § 6654****PROBLEM**

Under IRC §§ 6651(a)(1), (a)(2), and 6654, the IRS may impose penalties on taxpayers when they fail to timely file a tax return, fail to pay an amount shown as tax on a return, or underpay installments of estimated taxes, respectively. Of the 31 cases we reviewed, taxpayers appeared *pro se* in 20, and in these cases, the outcomes almost always favored the IRS. Taxpayers were represented in the only case in which the court ruled in their favor.

During our reporting period, between June 1, 2019, and May 31, 2020, there were a total of 24,064,628 taxpayers who had penalties imposed due to the failure to timely file a tax return, to pay an amount shown as tax on a return or underpay installments of estimated taxes. The largest total category of abatements was for individual taxpayers with 176,308 abatements for taxpayers who had failed to pay an amount on a tax return due to a reasonable cause. During this same period, taxpayers petitioned Tax Court in 127 cases where the failure to timely file a tax return penalty (delinquency penalty) and/or the estimated tax penalty was an issue during the examination.

**TAS RECOMMENDATION**

**[MLI 7-1]** Review and revise notices and publications where appropriate to provide more examples of circumstances that constitute reasonable cause to better educate taxpayers.

TAS Recommendation	<b>[MLI 7-1] Review and revise notices and publications where appropriate to provide more examples of circumstances that constitute reasonable cause to better educate taxpayers.</b>
IRS Response	<p>As the NTA points out, determining when the IRS may impose the IRC §§ 6651(a)(1), 6651(a)(2), and 6654 penalties for failures to timely file a tax return, failures to pay an amount shown as tax on a return, or underpayments of installments of estimated taxes, respectively, is relatively straightforward. The nearly unanimous rulings in favor of the IRS illustrate the case law is well established, and the statutory and regulatory guidance is exhaustive.</p> <p>Policy Statement 3-2 (Formerly P-2-7),<sup>16</sup> established in December of 1970, states “any sound reason advanced by a taxpayer as the cause for delay in filing a return, making deposits under the Federal Tax Deposit System, or paying tax when due, will be carefully analyzed to determine whether the applicable penalty should be asserted.” Reasonable cause is based on the individual facts and circumstances of each taxpayer, not whether a request meets or follows specific examples. The IRS will consider any sound reason for failing to file, deposit, or pay. Because the reasonable cause determination is based on individual facts and circumstances and cannot be fairly captured within a specific list of examples, the IRS does not agree to implement the NTA’s recommendation in this Most Litigated Issue.</p> <p>The IRS takes seriously its goal to empower and enable all taxpayers by helping taxpayers understand their rights and responsibilities. IRS.gov clearly describes the types of penalty relief available, examples of situations and facts to consider when requesting reasonable cause, types of supporting documentation that may be needed, and even how to request an appeal if the IRS denied the request for penalty relief.<sup>17</sup> The IRS is taking steps to increase awareness of penalties and educate taxpayers by making penalty information easier to find in IRS.gov searches; revising current penalties web pages on IRS.gov to expand and clarify information, including how to avoid the penalties through compliance; and adding additional web pages to IRS.gov for certain types of penalties, which will contain more helpful language from Policy Statement 3-2. Notices, publications, and form instructions have undergone continuous updates to address penalty relief and reasonable cause, as applicable,<sup>18</sup> and contain sufficient information to inform taxpayers of the options available if they disagree with the penalty.</p>
IRS Action	N/A
TAS Response	<p>TAS agrees there is substantial guidance regarding when reasonable cause should be applied for failure to file, failure to pay an amount shown as tax on a return, and failure to pay estimated tax penalties, and acknowledges that the IRS has made significant efforts to ensure taxpayers can learn about when abatement may be appropriate and how to make such a request.</p> <p>Additionally, as the IRS points out in its response, TAS agrees that reasonable cause abatement is dependent upon the particular facts and circumstances of a taxpayer’s situation, and there is no fact sheet that can be provided to a taxpayer to determine if reasonable cause abatement is appropriate. However, TAS believes it is critical that taxpayers get as much information about reasonable cause abatement, including examples of when such an abatement may be appropriate, in a variety of formats including notices. This will best observe a taxpayer’s <i>right to be informed</i> and may help in assisting taxpayers in determining when requesting reasonable cause abatement may be most appropriate.</p>

<sup>16</sup> See IRM 1.2.1.4.2.

<sup>17</sup> See <https://www.irs.gov/businesses/small-businesses-self-employed/penalty-relief>.

<sup>18</sup> Reasonable cause penalty relief is not applicable to all penalties. Although reasonable cause is not applicable for relief of the estimated tax penalty, a waiver of the penalty may be requested. A CP 30 for failing to pay estimated taxes (or CP 30A, if applicable) is issued when the penalty is assessed. It explains the estimated tax penalty and also the appeal rights to the taxpayer.

## Most Litigated Issue #8

## Itemized Deductions Reported on Schedule A (Form 1040)

## PROBLEM

Itemized deductions reported on Schedule A of IRS Form 1040 were among the ten Most Litigated Issues for the fourth time since the National Taxpayer Advocate's 2000 Annual Report to Congress. During this reporting period between June 1, 2019, and May 31, 2020, we identified 21 decisions, in which itemized deductions were litigated in federal courts. All but four of these cases were litigated in the U.S. Tax Court. The courts affirmed the IRS position in 17 of these cases, or about 81 percent, while taxpayers fully prevailed in two cases, or about ten percent of the cases. The remaining two cases, or about ten percent, resulted in split decisions. Taxpayers were represented in nine of the 21 (or 43 percent) while 12 of 21 cases (or 57 percent) had *pro se* (without counsel) taxpayers. During this same period, taxpayers petitioned Tax Court in 1,120 cases where itemized deductions was an issue during the examination.

## TAS RECOMMENDATION

**[MLI 8-1]** Evaluate the IRS's existing communication strategy, including the IRS website, guidance, and publications, to taxpayers, preparers, and practitioners to determine how to increase awareness about itemized deductions, including recordkeeping requirements. Then based on the findings, conduct outreach within the next two fiscal years to better educate taxpayers.

TAS Recommendation	<b>[MLI 8-1]</b> Evaluate the IRS's existing communication strategy, including the IRS website, guidance, and publications, to taxpayers, preparers, and practitioners to determine how to increase awareness about itemized deductions, including recordkeeping requirements. Then based on the findings, conduct outreach within the next two fiscal years to better educate taxpayers.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<p>The IRS has included itemized deductions and recordkeeping requirements consistently in our outreach efforts and is constantly evaluating information, feedback, and other data to build campaigns to educate taxpayers. Therefore, we agree to implement Recommendation MLI 8-1 in part.</p> <p>The IRS, including through our tax organization partners, regularly provides educational opportunities to inform taxpayers and practitioners about itemized deductions, along with other audit issue topics, and connects with the tax preparer community through virtual presentations, meetings, and cascading media information. In addition, through our partnerships with other non-tax organizations and corporations, the IRS has shared information to help the people they serve, members and employees in meeting their filing obligations, including itemized deductions changes and recordkeeping.</p>



IRS Action  
(continued)

The IRS Nationwide Tax Forums have addressed the changes to itemized deductions included in the Tax Cuts and Jobs Act (TCJA) as well as recordkeeping. In 2020, the Tax Forums presented the following seminars on preparer audit issues: "IRS Key Enforcement Issues," "Due Diligence in Practice before the IRS: Record-Keeping," and "Representing the Taxpayer without Records, Reconstructing Income and Expenses." Recordkeeping and documentation of itemized deductions are also addressed in the 2021 annual federal tax refresher course that is part of the Return Preparer Office's Annual Filing Season Program (AFSP). Approximately 33,000 return preparers take the federal tax refresher course each year.

The IRS posts general communications about recordkeeping and Schedule A itemized deductions on our website. In addition, the Interactive Tax Assistant's Deduction section for taxpayers currently includes a wealth of information on the topic. Information is also included through tax forms and publications. Our news media and social media messages include information on itemized deductions and recordkeeping. For example, we posted several tweets during the Get Ready for Filing Season campaign that focused on deductions.

The IRS also regularly conducts outreach on new tax legislation, most recently for the individual extenders and the Taxpayer Certainty and Disaster Relief Act of 2020 and how such legislation affects deductions for which taxpayers may be eligible. As the National Taxpayer Advocate's report acknowledges, it is reasonable to predict that litigation in this area will diminish now that fewer taxpayers itemize deductions under the TCJA. Nonetheless, the IRS will continue to analyze data, update, and create specialized messages, presentations, and campaigns to address itemized deductions and other recordkeeping requirements, as appropriate.

TAS  
Response

It is encouraging that the IRS agrees to implement this recommendation in part, and we look forward to working with the IRS to better educate taxpayers, preparers, and practitioners to increase awareness about itemized deductions, including recordkeeping requirements.

**Most Litigated Issue #9****Charitable Contribution Deductions Under IRC § 170****PROBLEM**

We identified 14 opinions issued between June 1, 2019, and May 31, 2020, on the issue of the deductibility of charitable contributions under IRC § 170, which is three fewer cases than in last year's report. Of the 14 cases, the most common issues were whether a donation constituted a qualified conservation easement (eight cases) and whether a claimed deduction was adequately substantiated (six cases). An additional case involved both issues. Taxpayers were usually represented, and the IRS usually prevailed. During this same period, taxpayers petitioned the Tax Court in 401 cases where charitable contributions were an issue during the examination.

IRS court victories in conservation easement cases do not appear to have deterred taxpayers from engaging in these transactions. Between 2017 and 2018, the number of individual participants in these transactions increased from 14,000 to 16,900, with many participating in multiple deals; the total amount of deductions claimed through these tax shelters increased from \$6.8 billion in 2017 to \$9.2 billion in 2018. In June 2020, the IRS offered to settle docketed Tax Court cases with this issue. Some taxpayers may accept the IRS's offer to settle their cases with this issue, but litigation in this area may very well continue for years.

**TAS RECOMMENDATION**

- [MLI 9-1]** Develop and publish additional guidance that contains sample easement provisions to assist taxpayers in drafting deeds that satisfy the statutory requirements for qualified conservation contributions, particularly the perpetuity requirement for those conservation easements that incentivize land preservation for future generations.

<b>TAS Recommendation</b>	<b>[MLI 9-1]</b> Develop and publish additional guidance that contains sample easement provisions to assist taxpayers in drafting deeds that satisfy the statutory requirements for qualified conservation contributions, particularly the perpetuity requirement for those conservation easements that incentivize land preservation for future generations.
<b>IRS Response</b>	IRS agrees to implement TAS recommendation in part.

IRS Action	<p>We share the goal of preventing unnecessary litigation by making it easier for taxpayers to draft conservation easement deeds that are fully compliant with the requirements set forth in I.R.C. § 170(h) and the regulations, and agree to implement TAS' recommendation in part. To that end, we released Chief Counsel Advice, CCA 2020-02011 (Jan. 10, 2020), that provides sample language for a constructive denial clause within a conservation easement deed, as well as a General Legal Advice Memorandum, GLAM 2020-001 (Mar. 27, 2020), providing sample language to amend a conservation easement, both of which are consistent with the perpetuity requirements set forth in I.R.C. § 170(h). The Office of Chief Counsel (Counsel) will consider publishing formal guidance containing sample clauses, while continuing to balance guidance priorities as a whole. In the meantime, Counsel plans to continue drafting and releasing informal guidance including sample clauses that taxpayers may use when drafting conservation easement deeds.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased the IRS recognizes that additional guidance may avert litigation. As noted in the report, the guidance the IRS provided in 2020 was welcome. We look forward to additional guidance that may help taxpayers navigate these complex issues and help prevent unnecessary litigation.</p>

## Research Study #1

## The IRS Can Systemically Identify Taxpayers at Risk of Economic Hardship and Screen Them Before They Enter Into Installment Agreements They Cannot Afford

### PROBLEM

The majority of IRS installment agreements (IAs) with individual taxpayers are streamlined agreements, meaning that verification of a taxpayer's financial circumstances is not required when the liability does not exceed a certain amount and can be paid within a specified number of years. To reduce taxpayer burden and minimize IRS resources when agreeing to an IA, the IRS has eased the requirements for entering into a streamlined IA. While streamlined IAs do not require the taxpayer to provide verification of his or her financial circumstances, unfortunately, these agreements place many taxpayers in a position where they cannot afford basic living expenses while meeting the payment required by the IA.

The IRS established allowable living expenses (ALEs) to ensure that the satisfaction of their unpaid tax liabilities does not interfere with the ability to pay for those expenses necessary for basic living. ALEs include groceries and other incidentals such as apparel or cleaning supplies, housing and utilities, transportation, and out-of-pocket health care expenses. However, with streamlined IAs, the IRS never compares the amount of these necessary expenses to the taxpayer's income. The result can be an IA that the taxpayer cannot afford while also meeting necessary living expenses.

TAS believes the IRS should establish an indicator, which shows whether a taxpayer is likely facing economic hardship. Specifically, TAS has developed an algorithm using the IRS ALEs to indicate when a taxpayer has income not in excess of their likely ALEs. In these situations, TAS believes the IRS should perform a basic financial analysis to ensure the taxpayer can afford the IA. Doing so could eliminate IRS rework when the taxpayer defaults an unaffordable IA, while also allowing the IRS to pursue other collection alternatives such as an offer in compromise or temporarily suspending collection action until the taxpayer's financial situation becomes more favorable.

This research study explores the effectiveness of an algorithm developed by TAS and based on systemically available information about the taxpayer's income and likely ALEs. The study examines non-streamlined IAs for individuals initiated from fiscal year (FY) 2017 through most of FY 2020. While TAS's concern is with streamlined IAs, we tested the effectiveness of the algorithm with non-streamlined IAs. Since the IRS is required to conduct financial verification on non-streamlined IAs, the outcome of the algorithm is being compared to these IAs.

The study shows that the algorithm agrees with the IRS determination 82 percent of the time and rises to 86 percent if no vehicle ownership expenses are allowed. The agreement rate increases to 95 percent when the taxpayer's systemically detected income exceeds \$50,000. Other conclusions from this study include:

- Agreement between an algorithm allowing taxpayers their likely ALEs and the IRS determination has increased slightly from FY 2017 to FY 2020;

- An algorithm comparing internal IRS income data to the minimum amount of ALEs provided to taxpayers has a 96 percent agreement rate with the IRS determination that the taxpayer could afford an IA; and
- An algorithm using internal IRS data to compare taxpayer's income to their likely ALEs are more likely to agree with the IRS determination when the taxpayers are elderly or when the taxpayers are married. However, the same algorithm is unlikely to agree with the IRS determination for taxpayers with systemically detected income of \$25,000 or less.

TAS believes the IRS should display an economic hardship indicator on taxpayer accounts when estimates of a taxpayer's ALEs and income indicate the taxpayer is not likely to afford a streamlined IA. If the indicator shows the likelihood of economic hardship, the IRS should perform a basic financial analysis before entering into the IA to make sure the taxpayer can afford the arrangement.

## TAS RECOMMENDATION

**[RS 1-1]** The IRS should implement an economic hardship indicator on taxpayer accounts when estimates of a taxpayer's ALEs and income indicate the taxpayer is not likely to afford a streamlined IA. If the indicator shows the likelihood of economic hardship, procedures would direct the IRS to perform a basic financial analysis before entering into the IA to ensure the taxpayer can afford it without causing additional financial hardship and potentially triggering unnecessary defaults.

TAS Recommendation	<p><b>[RS 1-1] The IRS should implement an economic hardship indicator on taxpayer accounts when estimates of a taxpayer's ALEs and income indicate the taxpayer is not likely to afford a streamlined IA. If the indicator shows the likelihood of economic hardship, procedures would direct the IRS to perform a basic financial analysis before entering into the IA to ensure the taxpayer can afford it without causing additional financial hardship and potentially triggering unnecessary defaults.</b></p>
IRS Response	<p>The IRS currently uses analytics (considering factors known through internal sources) when prioritizing and assigning collection work to the optimal work stream. We also offer a wide range of alternatives for taxpayers who may be facing difficult financial circumstances, including Partial Pay Installment Agreements, temporary suspensions of collection activity (for Currently Not Collectible accounts), and Offers in Compromise.</p> <p>TAS has proposed a computation using the IRS Allowable Living Expenses (ALEs) to attempt to indicate when a taxpayer has income not in excess of their likely basic living expenses. If a likelihood of economic hardship is indicated, TAS further recommends procedures directing the IRS to perform a basic financial analysis before entering into an installment agreement to ensure the taxpayer can afford it without causing additional financial hardship and potentially triggering unnecessary defaults. The concept of making such a computation a part of the installment agreement acceptance decision is an interesting one, and we have explored this concept in the past and have been engaged with TAS on this issue. We appreciate that our feedback has been heard and is reflected in the NTAs 2020 Annual Report.</p> <p>We do not believe income and presumed expenses alone would be sufficient to conclusively state that a taxpayer could not meet the proposed agreement, and the TAS recommendation seems to acknowledge that concern. The computation would not dictate the case outcome, but rather would be used to indicate a need for further inquiry into the taxpayer's financial condition.</p>

IRS Response (continued)	<p>One key concern is that such a practice would lead to more taxpayers being subjected to financial analysis interviews, an often lengthy process which could greatly reduce the number of taxpayers the IRS is able to serve. In light of this concern, further research is necessary in order to determine the utility of TAS's recommendation, including analysis of the results as they relate to the IRS decision on all types of installment agreements and Currently Not Collectible determinations, extending the analysis to determine the long-term performance of installment agreements and Currently Not Collectible determinations, analysis of the costs and savings associated with developing and implementing the change, and analysis of the performance of existing IRS analytics (like the CFO Recovery Model<sup>19</sup>) in place of creating a new computation.</p> <p>We will continue to partner with TAS on this issue, but believe further analysis of the concept and its wider impacts is warranted before we can determine whether such a change would benefit taxpayers and the IRS. Accordingly, we decline to implement the TAS recommendation.</p>
IRS Action	N/A
TAS Response	<p>The National Taxpayer Advocate appreciates the IRS's willingness to discuss the possibility of placing a marker on the accounts of taxpayers indicating a taxpayer's likely ability to afford to pay toward his or her delinquent federal tax liabilities. TAS agrees with the IRS that its proposed algorithm using internal IRS data will not always be sufficient to determine if economic hardship exists. As indicated in this TAS study, IRS systemic data will not always be able to determine if a taxpayer has the ability to pay a federal tax delinquency without incurring economic hardship. For instance, a taxpayer may receive a raise in income, move to a location where expenses are lower, or pay less than the average amount for a necessary living expense, such as housing or transportation. However, as indicated in its study report, the TAS algorithm produced results agreeing with the IRS determination, after conducting a financial analysis, in nearly 82 percent of the nonstreamlined installment agreements entered into by the IRS from October 2016 through July 2020.</p> <p>Over the past four years, the IRS has entered into nearly 10.5 million IAs, and about 70 percent of these agreements have been streamlined. The IRS agrees to streamlined IAs without conducting any analysis of a taxpayer's financial condition. TAS understands that requiring the IRS to conduct a basic analysis of a taxpayer's ability to pay on outstanding federal tax debts will require some additional resources, and the taxpayer may be slightly inconvenienced by providing financial information to the IRS. Nevertheless, the taxpayer has the <i>right to a fair and just tax system</i>. The Internal Revenue Manual states that allowable living expenses are designed to provide for a taxpayer and his or her family's health and welfare. The IRS's current procedures do not afford this ability to many taxpayers entering into streamlines IAs each year.</p> <p>TAS agrees that the IRS offers other collection alternatives to taxpayers who cannot afford to pay, such as temporary delays in collection activity or offers in compromise. Yet, these alternatives generally require the IRS to conduct a financial analysis. Furthermore, taxpayers may not be knowledgeable of these alternatives or may be afraid to inquire about them. Therefore, TAS believes that the IRS should identify taxpayers who do not have the apparent ability to make payments on their outstanding federal tax obligations and be required to verify their ability to pay on these delinquencies while also affording basic living expenses. TAS looks forward to continuing to partner with IRS to develop methods to ensure that taxpayers can afford streamlined IAs, without unduly burdening them or the IRS.</p>

<sup>19</sup> This Model is used by the IRS Collection function and the Office of the Chief Financial Officer (CFO) to predict the future collection potential of accounts.

## Evolution of the Office of the Taxpayer Advocate

The Office of the Taxpayer Ombudsman was created by the IRS in 1979 to serve as the primary advocate, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).<sup>1</sup>

In TBOR 1, Congress added IRC § 7811, granting the Ombudsman (now the National Taxpayer Advocate) the statutory authority to issue Taxpayer Assistance Orders (TAOs) if, in the determination of the Ombudsman, a taxpayer is suffering or is about to suffer significant hardship because of the way the Internal Revenue laws are being administered by the Secretary.<sup>2</sup> Further, TBOR 1 directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an Annual Report to Congress (ARC) about the quality of taxpayer services provided by the IRS. This report was delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.<sup>3</sup>

In 1996, the Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor to IRC § 7803), replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.<sup>4</sup> The Joint Committee on Taxation set forth the following reasons for change:

To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.<sup>5</sup>

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate but also described its functions:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers have problems in dealings with the IRS;
- To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and
- To identify potential legislative changes that may be appropriate to mitigate such problems.<sup>6</sup>

1 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

2 *Id.*

3 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3373 (Nov. 10, 1988).

4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453-56 (July 30, 1996).

5 J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 20 (Dec. 18, 1996).

6 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453-1454 (July 30, 1996).

Congress did not provide the Taxpayer Advocate with direct line authority over the existing regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program, the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2, Congress believed it sufficient to require that “all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc.”<sup>7</sup>

TBOR 2 also replaced the joint Assistant Commissioner/Taxpayer Advocate Report to Congress with two annual reports issued directly and independently by the Taxpayer Advocate to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.<sup>8</sup> The first report, the Objectives Report to Congress, is to contain the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This report is to provide full and substantive analysis in addition to statistical information and is due no later than June 30 of each calendar year.

The second report is on the activities of the Office of the Taxpayer Advocate during the fiscal year ending during that calendar year. Section 7803(c)(2)(B)(ii) of the IRC, as amended by the Taxpayer First Act (TFA), requires the National Taxpayer Advocate to submit this report each year and to include in it, among other things, a description of the ten most serious problems encountered by taxpayers as well as administrative and legislative recommendations to mitigate those problems. The report must:

- Identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and IRS responsiveness;
- Contain recommendations received from individuals with the authority to issue a TAO;
- Contain a summary of the ten most serious problems<sup>9</sup> encountered by taxpayers, including a description of the nature of such problems;
- Contain an inventory of initiatives and recommendations for which action has been taken and the result of such action;
- Contain an inventory of initiatives and recommendations for which action remains to be completed and the period of time these items have been in the inventory;
- Contain an inventory of initiatives and recommendations for which there has been no action, an explanation for the lack of action, and the responsible official;
- Identify any TAO or Taxpayer Advocate Directive (TAD)<sup>10</sup> that was not honored by the IRS in a timely manner;
- Contain recommendations for legislative or administrative action that will resolve taxpayer problems;
- Identify areas of the tax law that impose significant compliance burdens on taxpayers or the IRS, including specific recommendations for remedy;

7 J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

8 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453-54 (July 30, 1996).

9 As originally enacted, TBOR 2 required a summary of at least 20 of the most serious problems. In July 2019, the TFA reduced the number of most serious problems to ten. See Pub. L. No. 116-25, § 1301(b)(1), 133 Stat. 981, 992 (July 1, 2019).

10 A TAD mandates that functional areas make certain administrative or procedural changes to improve a process or grant relief to groups of taxpayers (or all taxpayers). TADs are used to protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers. Internal Revenue Manual 13.2.1.6, Taxpayer Advocate Directives (Sept. 29, 2020).



- Identify the ten most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes;
- With respect to any statistical information included in such report, include a statement of whether such statistical information was reviewed or provided by the Secretary under IRC § 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology; and
- Include other such information as the National Taxpayer Advocate may deem advisable.

The stated objective of these two reports is for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. While both reports are to include statistical information, the TFA created a requirement whereby the National Taxpayer Advocate must coordinate research with the office of the Treasury Inspector General for Tax Administration (TIGTA). The National Taxpayer Advocate is now precluded from reporting statistical information that is included in a TIGTA report.<sup>11</sup> “The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury.”<sup>12</sup>

Finally, TBOR 2 amended IRC § 7811, extending the scope of a TAO, by providing the Taxpayer Advocate “with broader authority to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws.”<sup>13</sup> For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute also provided that only the National Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or rescinds a TAO must respond in writing to the National Taxpayer Advocate with his or her reasons for such action.<sup>14</sup>

In 1997, the National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the “voice of the taxpayer.” In its discussion of the Office of the Taxpayer Advocate, the Commission noted:

Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the [N]ational Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.<sup>15</sup>

In response to these concerns, in the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress amended IRC § 7803(c), renaming the Taxpayer Advocate as the National Taxpayer Advocate and mandating that the National Taxpayer Advocate could not be an officer or an employee of the IRS for two years

<sup>11</sup> IRC § 7803(c)(2)(B)(iv).

<sup>12</sup> J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

<sup>13</sup> *Id.*

<sup>14</sup> Pub. L. No. 104-168, § 102(b), 110 Stat. 1452, 1456 (July 30, 1996).

<sup>15</sup> Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS*, 48 (June 25, 1997).

preceding or five years following his or her tenure as the National Taxpayer Advocate (service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision).<sup>16</sup>

RRA 98 provided for Local Taxpayer Advocates (LTAs) to be located in each state and mandated a reporting structure for LTAs to report directly to the National Taxpayer Advocate.<sup>17</sup> As required by IRC § 7803(c)(4)(A)(iii), the LTA must advise taxpayers at their first meeting of the fact that “the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate.”<sup>18</sup>

Congress also granted the LTAs discretion to not disclose to the IRS the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.<sup>19</sup> RRA 98 also expanded the definition of “significant hardship” in IRC § 7811 to include four specific circumstances:

1. An immediate threat of adverse action;
2. A delay of more than 30 days in resolving taxpayer account problems;
3. The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
4. Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.<sup>20</sup>

The Committee Reports make clear that this list is a non-exclusive list of what constitutes a significant hardship.<sup>21</sup>

Prior to 2011, Treasury Regulation § 301.7811-1 had not been updated since it was first published in 1992. Consequently, after Congress expanded the definition of “significant hardship” in the statute in 1998, the definition in the regulation was inconsistent. However, on April 1, 2011, the IRS published in the *Federal Register* final regulations under IRC § 7811 that contain a definition of significant hardship consistent with existing law and practice.<sup>22</sup>

The National Taxpayer Advocate advocated for many years that the IRS establish a TBOR. In June 2014, the IRS finally adopted the Taxpayer Bill of Rights — a set of ten fundamental rights that taxpayers should be aware of when dealing with the IRS.<sup>23</sup> One of those ten rights is the *right to a fair and just tax system*, which gives taxpayers the right to receive assistance from the Office of the Taxpayer Advocate if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. In December 2015, Congress enacted IRC § 7803(a)(3), which requires the Commissioner to ensure that employees of the IRS are familiar with and act in accord with taxpayer rights, including the *right to a fair and just tax system*.<sup>24</sup>

16 Pub. L. No. 105-206, § 1102(a), 112 Stat. 685, 699 (July 22, 1998).

17 Pub. L. No. 105-206, § 1102(a), 112 Stat. 701 (July 22, 1998).

18 IRC § 7803(c)(4)(A)(iii).

19 IRC § 7803(c)(4)(A)(iv).

20 IRC § 7811(a)(2).

21 See, e.g., H.R. REP. NO. 105-599, at 215 (1998) (Conf. Rep.).

22 Treas. Reg. § 301.7811-1(a)(4)(ii); 76 Fed. Reg. 18,059, 18,060-61 (Apr. 1, 2011).

23 See IR-2014-72 (June 10, 2014).

24 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401, 129 Stat. 2242, 3117 (Dec. 18, 2015).

The passing of the TFA in July 2019 also codified the timeframes surrounding issuance of TADs. Now, the IRS must respond to a TAD no later than 90 days after its issuance.<sup>25</sup> If the IRS decides to modify or rescind the TAD, the National Taxpayer Advocate may appeal that decision to the Commissioner of the IRS within 90 days. The Commissioner then has 90 days to either ensure compliance with the TAD or provide reasons to the National Taxpayer Advocate for the modification or rescission of the TAD. Additionally, the National Taxpayer Advocate must report on any TADs that were not honored in a timely manner in the activities report.<sup>26</sup>

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<sup>25</sup> IRC § 7803(c)(5)(A).

<sup>26</sup> IRC § 7803(c)(2)(B)(viii).



# CASE ACCEPTANCE CRITERIA

As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.<sup>1</sup> TAS case acceptance criteria fall into four main categories.<sup>2</sup>

## ECONOMIC BURDEN

Economic burden cases are those involving a financial difficulty to the taxpayer: an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.<sup>3</sup>

- CRITERIA 1** The taxpayer is experiencing economic harm or is about to suffer economic harm.
- CRITERIA 2** The taxpayer is facing an immediate threat of adverse action.
- CRITERIA 3** The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
- CRITERIA 4** The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.

## SYSTEMIC BURDEN

Systemic burden cases are those in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue.<sup>4</sup>

- CRITERIA 5** The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
- CRITERIA 6** The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
- CRITERIA 7** A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.

## BEST INTEREST OF THE TAXPAYER

TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected.<sup>5</sup>

- CRITERIA 8** The manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair the taxpayer's rights.

## PUBLIC POLICY

Acceptance of cases into TAS under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers.<sup>6</sup>

- CRITERIA 9** The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

<sup>1</sup> IRC § 7803(c)(2)(A)(i).

<sup>2</sup> TAS changed its case acceptance criteria to generally stop accepting certain issues. See Internal Revenue Manual (IRM) 13.1.7.3 (Feb. 4, 2015) temporarily amended by Interim Guidance Memorandum (IGM) TAS-13-0121-0003, Interim Guidance on Exceptions to TAS Case Acceptance Criteria Taxpayer Issues Solely Related to the Processing of Original and Amended Returns with No Indication of IRS Receipt of the Return (Jan. 19, 2021; expires Jan. 18, 2023), IGM TAS-13-0121-0001, Interim Guidance on Exclusion from TAS Case Acceptance Criteria Taxpayers Impacted by Pre-Refund Wage Verification Hold and Amended Returns (Jan. 15, 2021; expires Dec. 31, 2021), and IGM TAS-13-0521-0006, Interim Guidance on Exceptions to TAS Case Acceptance Criteria For Taxpayer Issues Related to Unemployment Compensation Received in Taxable Year 2020 (May 4, 2021; expires May 3, 2023).

<sup>3</sup> See IRM 13.1.7.2.1, TAS Case Criteria 1-4, Economic Burden (Feb. 4, 2015).

<sup>4</sup> TAS changed its case acceptance criteria to generally stop accepting certain systemic burden issues. See IRM 13.1.7.2.2, TAS Case Criteria 5-7, Systemic Burden (Feb. 4, 2015) and IRM 13.1.7.3, Exceptions to Taxpayer Advocate Service Criteria (Feb. 4, 2015).

<sup>5</sup> See IRM 13.1.7.2.3, TAS Case Criteria 8, Best Interest of the Taxpayer (Feb. 4, 2015).

<sup>6</sup> See IGM TAS-13-0521-0005, Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy (May 6, 2021).

## List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) represent individuals whose income is below a certain level and need to resolve tax problems with the IRS, such as audits, appeals, and tax collection disputes. LITCs can represent taxpayers in Tax Court as well as with the IRS. In addition, LITCs can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. LITCs provide services for free or a small fee. LITCs receive IRS grants but work independently to assist and advocate for taxpayers.

Low-income taxpayers who need help in resolving tax disputes with the IRS and cannot afford representation may qualify for free or low-cost assistance from an LTC. Using poverty guidelines published annually by the Department of Health and Human Services, each LTC decides if an individual meets the income eligibility guidelines and other criteria before it agrees to representation. Eligible taxpayers must generally have income that does not exceed 250 percent of the poverty guidelines. Figure 1 shows the income ceilings for 2021.

**FIGURE 1, LTC Income Guidelines (250 percent of Federal Poverty Guidelines)**

Size of Family Unit	48 Contiguous States, D.C., and Puerto Rico	Alaska	Hawaii
1	\$32,200	\$40,225	\$37,050
2	\$43,550	\$54,425	\$50,100
3	\$54,900	\$68,625	\$63,150
4	\$66,250	\$82,825	\$76,200
5	\$77,600	\$97,025	\$89,250
6	\$88,950	\$111,225	\$102,300
7	\$100,300	\$125,425	\$115,350
8	\$111,650	\$139,625	\$128,400
For each additional person, add	\$11,350	\$14,200	\$13,050

Figure 2 shows LITCs receiving federal funding for the 2021 calendar year that operated by nonprofit organizations or academic institutions. Although LITCs receive partial funding from the IRS, LITCs, their employees, and their volunteers are completely independent of the IRS.

Low-income taxpayers may be able to receive assistance from a referral system operated by a state bar association, a state or local society of accountants or enrolled agents, or another nonprofit tax professional organization. Contact information for clinics may change, so please check for the most recent information at <https://www.taxpayeradvocate.irs.gov/about-us/low-income-taxpayer-clinics-litc/>.

**FIGURE 2, 2021 LITCs and Contact Information**

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center LTC	800-478-3474 907-562-0335	All languages through interpreter services
AL	Montgomery	Legal Services Alabama LTC	866-456-4995 334-832-4570	All languages through interpreter services
AR	Little Rock	UA Little Rock Bowen School of Law LTC	501-916-5492	Spanish
	Springdale	Legal Aid of Arkansas LTC	479-442-0600	Spanish and Marshallese
AZ	Phoenix	Community Legal Services LTC	800-852-9075 602-258-3434	Spanish and other languages through interpreter services
	Tucson	Southern Arizona Tax Clinic	520-622-2801	Spanish and other languages through interpreter services
CA	Los Angeles	Bet Tzedek Legal Services Tax Clinic	323-939-0506	Spanish, Russian, and other languages through interpreter services
	Los Angeles	KYCC Low Income Taxpayer Clinic	213-232-2700	Spanish and Korean
	Los Angeles	Pepperdine LTC	213-673-4831	Spanish
	Los Angeles	Bookstein Low Income Taxpayer Clinic	818-677-3600	Spanish
	Orange	Chapman University Tax Law Clinic	714-628-2535	Spanish and Vietnamese
	Riverside	Inland Counties Legal Services LTC	888-245-4257 951-368-2555	Spanish, Mandarin, and other languages through interpreter services
	San Diego	Legal Aid Society of San Diego LTC	877-534-2524	Spanish, Vietnamese, Tagalog, Arabic, Farsi
	San Diego	University of San Diego LTC	619-260-7470	Spanish and other languages through interpreter services
	San Francisco	Chinese Newcomers Service Center	415-421-2111	Chinese, Cantonese, Mandarin, Vietnamese, Taishanese
	San Francisco	Justice and Diversity Center of the Bar Association of San Francisco	415-982-1600	Spanish
	San Francisco	UC Hastings Low-Income Taxpayer Clinic	415-703-8287	Spanish
	San Luis Obispo	Cal Poly Low Income Taxpayer Clinic	877-318-6772 805-756-2951	Spanish
CO	Denver	Colorado Legal Services LTC	844-440-4848 303-837-1313	Spanish and other languages through interpreter services
	Denver	Denver Asset Building Coalition LTC	303-388-7030	All languages through interpreter services
	Denver	University of Denver LTC	303-871-6331	Spanish and Mandarin

#### Appendix 4: List of Low Income Taxpayer Clinics

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3238	Spanish and other languages through interpreter services
	Hartford	UConn Law School Tax Clinic	860-570-5165	Spanish and other languages through interpreter services
DC	Washington	The Catholic University of America LITC	202-319-6788	Spanish
	Washington	The Janet R. Spragens Federal Tax Clinic	202-274-4144	All languages through interpreter services
DE	Georgetown	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-690-5000	Spanish, Hindi, Italian
FL	Ft. Myers	Florida Rural Legal Services Low Income Taxpayer Clinic	888-582-3410	Spanish and Creole
	Gainesville	Three Rivers Legal Services, Inc.	866-256-8091 352-372-0519	Spanish and other languages through interpreter services
	Miami	Legal Services of Greater Miami Community Tax Clinic	305-576-0080	Spanish, Haitian, Creole
	Plant City	Bay Area Legal Services Inc. LITC	813-752-1335	All languages through interpreter services
	Plantation	Legal Aid Services of Broward and Collier Counties	954-736-2477	Spanish and Creole
	St. Petersburg	Gulfcoast Legal Services LITC	727-821-0726	Spanish and other languages through interpreter services
	Tallahassee	Legal Services of North Florida	850-385-9007	Spanish
	West Palm Beach	Legal Aid Society of Palm Beach County LITC	800-403-9353 561-655-8944	Spanish
GA	Atlanta	The Philip C. Cook Low Income Taxpayer Clinic	404-413-9230	Spanish
	Hinesville	JCVision and Associates, Inc.	866-396-4243 912-877-4243	Spanish
	Lawrenceville	North Georgia Low Income Taxpayer Clinic	678-646-5661	Spanish
HI	Honolulu	Hawaii Low Income Taxpayer Clinic	800-677-1159	All languages through interpreter services
IA	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-2151	Spanish and other languages through interpreter services
ID	Twin Falls	La Posada Tax Clinic	208-735-1189	Spanish

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State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
IL	Chicago	Ladder Up Tax Clinic	312-630-0242	Spanish
	Chicago	Legal Aid Chicago Tax Clinic	312-341-1070	Spanish, Polish, and other languages through interpreter services
	Chicago	Loyola Federal Income Tax Clinic	312-915-7176	All languages through interpreter services
	Elgin	Administer Justice	847-844-1100	Spanish and other languages through interpreter services
	Wheaton	Prairie State Legal Services LITC	855-829-7757	All languages through interpreter services
IN	Bloomington	Indiana Legal Services LITC	844-243-8570 812-339-7668	Spanish and other languages through interpreter services
	Indianapolis	Neighborhood Christian Legal Clinic	317-429-4131	Spanish, French, Arabic, Burmese, Hakha Chin, Kinyarwanda, Maya, Swahili, Chinese, Zophei, Falam, and other languages through interpreter services
	South Bend	Notre Dame Tax Clinic	574-631-3272	Spanish and other languages through interpreter services
KS	Kansas City	Kansas Legal Services, Inc. LITC	800-723-6953 913-621-0200	Spanish, French, German, Russian, and other languages through interpreter services
KY	Covington	The Center for Great Neighborhoods LITC	859-547-5542	Spanish
	Louisville	Legal Aid Society Low Income Taxpayer Clinic	800-292-1862 502-584-1254	All languages through interpreter services
	Richmond	AppalRed Low Income Taxpayer Clinic	800-477-1394 859-624-1394	Spanish and other languages through interpreter services
LA	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	Spanish, Vietnamese, and other languages through interpreter services
MA	Boston	Greater Boston Legal Services LITC	800-323-3205 617-603-1569	All languages through interpreter services
	Jamaica Plain	Legal Services Center of Harvard Law School LITC	866-738-8081 617-522-3003	All languages through interpreter services
	Lynn	Northeast legal Aid LITC	978-458-1465	Spanish, Khmer, Portuguese, Vietnamese, and other languages through interpreter services
	Springfield	Springfield Partners for Community Action LITC	844-877-7422 413-263-6500	Spanish, Vietnamese, Cantonese, Russian, Korean
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-547-6537	All languages through interpreter services
	Baltimore	University of Baltimore LITC	410-837-5706	All languages through interpreter services
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	All languages through interpreter services



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State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
ME	Bangor	Pine Tree Legal Assistance Inc. LITC	207-942-8241	All languages through interpreter services
MI	Ann Arbor	University of Michigan LITC	734-936-3535	All languages through interpreter services
	Detroit	Accounting Aid Society	866-673-0873 313-556-1920	Spanish and Arabic
	East Lansing	Alvin L. Storrs Low Income Taxpayer Clinic	517-432-6880	All languages through interpreter services
	Grand Rapids	West Michigan Low Income Taxpayer Clinic (Legal Aid of Western Michigan)	800-442-2777 616-774-0672	Spanish and other languages through interpreter services
MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	800-292-4150 612-332-1441	Spanish, Somali, Hmong, Arabic, Oromo, Amharic, and other languages through interpreter services
	Minneapolis	University of Minnesota LITC	612-625-5515	Somali, Spanish, Hmong, Karen, and other languages through interpreter services
MO	Kansas City	Legal Aid of Western Missouri LITC	800-990-2907 816-474-6750	Spanish and other languages through interpreter services
	Kansas City	Kansas City Tax Clinic	816-235-6201	All languages through interpreter services
	St. Louis	Washington University School of Law LITC	314-935-7238	Spanish and French
MS	Oxford	Mississippi Taxpayer Assistance Project	888-808-8049	All languages through interpreter services
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	Spanish and other languages through interpreter services
NC	Charlotte	North Carolina Low Income Taxpayer Clinic	800-438-1254 800-247-1931 (SP) 704-376-1600	Spanish and other languages through interpreter services
	Durham	NC Central University School of Law LITC	919-530-7166	Spanish
NE	Lincoln	Legal Aid of Nebraska LITC	877-250-2016 402-348-1060	All languages through interpreter services
NH	Concord	NH Pro Bono Low-Income Taxpayer Project	603-228-6028	All languages through interpreter services

#### Appendix 4: List of Low Income Taxpayer Clinics

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
NJ	Camden	South Jersey Legal Services, Inc. LITC	800-496-4570 856-964-2010	All languages through interpreter services
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	Spanish, Haitian-Creole, Portuguese, Hindi, Arabic
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	Spanish, Korean, Hindi, Urdu, Hebrew, Arabic, Portuguese, Tagalog, and other languages through interpreter services
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	Spanish
NM	Albuquerque	New Mexico Legal Aid Low Income Taxpayer Clinic	866-416-1922 833-545-4357	All languages through interpreter services
	Farmington	Four Corners Low Income Taxpayer Clinic	505-566-3747	Spanish and Navajo
NY	Albany	Legal Aid Society of Northeastern New York LITC	800-462-2922 518-462-6765	All languages through interpreter services
	Bronx	Bronx Legal Services	917-661-4500	Spanish and other languages through interpreter services
	Brooklyn	Brooklyn Legal Services Corporation A LITC	718-487-2300	Spanish and other languages through interpreter services
	Brooklyn	Brooklyn Low-Income Taxpayer Clinic	917-661-4500	Spanish, Russian, American Sign Language, and other languages through interpreter services
	Buffalo	Erie County Bar Association Volunteer Lawyers Project LITC	800-229-6198 716-847-0662	All languages through interpreter services
	Hempstead	Hofstra Law School Federal Tax Clinic	516-463-5934	Spanish and other languages through interpreter services
	Jamaica	Queens Legal Services LITC	917-661-4500	All languages through interpreter services
	New York	Fordham Law School	212-633-7353	Spanish, Korean, Mandarin, Russian, Ukrainian, and other languages through interpreter services
	New York	Mobilization for Justice	212-417-3839	Spanish, Mandarin, Korean, and other languages through interpreter services
	New York	The Legal Aid Society LITC	212-426-3013	Spanish, Chinese, and other languages through interpreter services
	Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	All languages through interpreter services

#### Appendix 4: List of Low Income Taxpayer Clinics

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
OH	Akron	Community Legal Aid Services LITC	800-998-9454	Spanish and other languages through interpreter services
	Cincinnati	Legal Aid of Greater Cincinnati LITC	800-582-2682 513-241-9400	All languages through interpreter services
	Cleveland	The Legal Aid Society of Cleveland LITC	888-817-3777 216-861-5500	Spanish and other languages through interpreter services
	Columbus	The Legal Aid Society of Columbus LITC	877-224-8374 614-224-8374	Spanish and other languages through interpreter services
	Columbus	Southeastern Ohio Legal Services LITC	800-837-2508 740-354-7563	All languages through interpreter services
	Toledo	Toledo Tax Controversy Clinic LITC	419-684-8822	Arabic
OK	Tulsa	Legal Aid Services of Oklahoma LITC	918-236-9572	Spanish and other languages through interpreter services
OR	Portland	Legal Aid Services of Oregon LITC	503-224-4086	Spanish, Mandarin, Japanese, and other languages through interpreter services
	Portland	Lewis & Clark Low Income Taxpayer Clinic	503-768-6500	Spanish and other languages through interpreter services
PA	Philadelphia	Philadelphia Legal Assistance LITC	215-981-3800	All languages through interpreter services
	Philadelphia	Temple Law School LITC	215-204-8948	Spanish
	Pittsburgh	University of Pittsburgh School of Law LITC	412-648-1300	Spanish and French
	Villanova	Villanova Federal Tax Clinic	888-829-2546 610-519-4123	Spanish and other languages through interpreter services
	Washington	Southwestern Pennsylvania Legal Services LITC	724-225-6170	All languages through interpreter services
	York	MidPenn Legal Services Low Income Taxpayer Clinic	844-675-7829	Spanish and other languages through interpreter services
RI	Providence	Rhode Island Legal Services LITC	401-274-2652	Spanish and other languages through interpreter services
SC	Greenville	South Carolina Legal Services LITC	888-346-5592	Spanish and other languages through interpreter services
SD	Vermillion	University of South Dakota School of Law Federal Tax Clinic	844-366-8866 605-658-3531	All languages through interpreter services
TN	Memphis	Memphis Area Legal Services	901-523-8822	All languages through interpreter services
	Nashville	Tennessee Taxpayer Project	866-481-3669 865-483-8454	Spanish and other languages through interpreter services

#### Appendix 4: List of Low Income Taxpayer Clinics

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
TX	Fort Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	Spanish and other languages through interpreter services
	Fort Worth	Texas A&M University School of Law, Tax Dispute Resolution Clinic	817-212-4123	Spanish and other languages through interpreter services
	Houston	Houston Volunteer Lawyers LITC	713-228-0732	Spanish, Chinese, and other languages through interpreter services
	Houston	Lone Star Legal Aid LITC	800-733-8394 713-652-0077	Spanish, Vietnamese, and other languages through interpreter services
	Houston	South Texas College of Law LITC	800-646-1253 713-646-2922	All languages through interpreter services
	Lubbock	Texas Tech School of Law LITC	800-420-8037 806-742-4312	Spanish
	San Antonio	Texas Taxpayer Assistance Project	888-988-9996 210-212-3747	Spanish
UT	Provo	Centro Hispano LITC	801-655-0258 801-691-5259	Spanish, Portuguese, and other languages through interpreter services
VA	Fairfax	Legal Services of Northern Virginia LITC	866-534-5233 703-778-6800	Spanish and other languages through interpreter services
	Lexington	Washington and Lee University School of Law Tax Clinic	540-458-8918	All languages through interpreter services
	Richmond	The Community Tax Law Project	800-295-0110 804-358-5855	Spanish and other languages through interpreter services
VT	Burlington	Vermont Low Income Taxpayer Clinic	800-889-2047	All languages through interpreter services
WA	Seattle	University of Washington Federal Tax Clinic	866-866-0158 206-685-6805	Spanish, Russian, Chinese, Swahili, Portuguese, French, Punjabi, Vietnamese, and Hindi
	Spokane	Gonzaga University Federal Tax Clinic	800-793-1722 509-313-5791	All languages through interpreter services
WI	Milwaukee	Legal Action of Wisconsin LITC	855-502-2468 414-274-3400	All languages through interpreter services
	Wausau	Northwoods Tax Project	800-472-1638 715-842-1681	Spanish and Hmong
WV		For assistance, see The Community Tax Law Project in Virginia		

## Glossary of Acronyms

Acronym	Definition
ACS	Automated Collection System
ACTC	Advanced Child Tax Credit
AFSP	Annual Filing Season Program
AGI	Adjusted Gross Income
ALE	Allowable Living Expenses
AM	Accounts Management
APTC	Advance Premium Tax Credit
ARC	Annual Report to Congress
ARPA	American Rescue Plan Act
AUR	Automated Underreporter
BAM	Business Account Manager
BFS	Bureau of the Fiscal Service
BMF	Business Master File
BOD	Business Operating Division
BSM	Business Systems Modernization
BSP	Business System Planning
CA	Case Advocate
CAA	Certified Acceptance Agent
CADE	Customer Account Data Engine
CAF	Centralized Authorization File
CAR	Collection Activity Report
CARE	Customer Assistance, Relationships and Education
CARES	Coronavirus Aid, Relief, and Economic Security Act
CAS	Customer Account Services
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CFO	Chief Financial Officer or Chief Financial Office
CI	Criminal Investigation
CIO	Chief Information Officer

Acronym	Definition
CIS	Correspondence Imaging System
CNC	Currently Not Collectible
COTS	Commercial Off-the-Shelf
COVID-19	Coronavirus Disease of 2019
CSED	Collection Statute Expiration Date
CSP	Credential Service Provider
CSR	Customer Service Representative
CTC	Child Tax Credit
CY	Calendar Year
DCSA	Defense Counterintelligence and Security Agency
DUT	Documentation Upload Tool
ECM	Enterprise Case Management
EDCMO	Enterprise Digitalization and Case Management Office
EIC	Earned Income Credit
EIP	Economic Impact Payment
EITC	Earned Income Tax Credit
EPST	Enterprise Planning Scenario Tool
ERS	Error Resolution System
EST	Eastern Standard Time
FAQ	Frequently Asked Question
FBAR	Report of Foreign Bank and Financial Accounts
FEMA	Federal Emergency Management Agency
FFI	Free File Initiative
FRC	Federal Records Center
FTA	First Time Abatement
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GLAM	General Legal Advice Memorandum

## Appendix 5: Glossary of Acronyms

Acronym	Definition
<b>HCO</b>	Human Capital Office
<b>HR</b>	Human Resources
<b>IA</b>	Installment Agreement
<b>IDEA</b>	Integrated Digital Experience Act
<b>IDT</b>	Identity Theft
<b>IDTVA</b>	Identity Theft Victim Assistance
<b>IGM</b>	Interim Guidance Memorandum
<b>IIR</b>	International Information Return
<b>IMF</b>	Individual Master File
<b>IP PIN</b>	Identity Protection Personal Identification Number
<b>IR</b>	Internal Revenue
<b>IRC</b>	Internal Revenue Code
<b>IRM</b>	Internal Revenue Manual
<b>IRS</b>	Internal Revenue Service
<b>IRSAC</b>	Internal Revenue Service Advisory Council
<b>IT</b>	Information Technology
<b>ITA</b>	Interactive Tax Assistant
<b>ITIN</b>	Individual Taxpayer Identification Number
<b>IVO</b>	Integrity and Verification Operation
<b>JCS</b>	Joint Chiefs of Staff
<b>JOC</b>	Joint Operations Center
<b>LB&amp;I</b>	Large Business & International
<b>LITC</b>	Low Income Taxpayer Clinic
<b>LOS</b>	Level of Service
<b>LSR</b>	Leadership Succession Review
<b>LTA</b>	Local Taxpayer Advocate
<b>MeF</b>	Modernized e-File
<b>MLI</b>	Most Litigated Issue
<b>MSP</b>	Most Serious Problem
<b>NARA</b>	National Archives and Records Administration
<b>NFC</b>	National Finance Center
<b>NFTL</b>	Notice of Federal Tax Lien

Acronym	Definition
<b>NIST</b>	National Institute of Standards and Technology
<b>NOL</b>	Net Operating Loss
<b>NR</b>	Nonresident
<b>NTA</b>	National Taxpayer Advocate
<b>NTEU</b>	National Treasury Employees Union
<b>OCR</b>	Optical Character Recognition
<b>OIC</b>	Offer in Compromise
<b>OMB</b>	Office of Management and Budget
<b>PCA</b>	Private Collection Agency
<b>PIN</b>	Personal Identification Number
<b>PSD</b>	Problem Solving Day
<b>PTC</b>	Premium Tax Credit
<b>PY</b>	Processing Year
<b>PYEI</b>	Prior Year Earned Income
<b>RIVO</b>	Return Integrity Verification Operations
<b>RRA 98</b>	IRS Restructuring and Reform Act of 1998
<b>RRC</b>	Recovery Rebate Credit
<b>RRP</b>	Return Review Program
<b>SADI</b>	Secure Access Digital Identity
<b>SAMS</b>	Systemic Advocacy Management System
<b>SB/SE</b>	Small Business/Self-Employed
<b>SERP</b>	Servicewide Electronic Research Program
<b>SLA</b>	Service Level Agreement
<b>SP</b>	Special Publication
<b>SSA</b>	Social Security Administration
<b>STARS</b>	Strategic Talent Analytics & Recruitment Solutions
<b>TAC</b>	Taxpayer Assistance Center
<b>TAD</b>	Taxpayer Advocate Directive
<b>TAMRA</b>	Technical and Miscellaneous Revenue Act
<b>TAO</b>	Taxpayer Assistance Order
<b>TAS</b>	Taxpayer Advocate Service
<b>TBM</b>	Technology Business Management
<b>TBOR</b>	Taxpayer Bill of Rights

Acronym	Definition
<b>TCE</b>	Tax Counseling for the Elderly
<b>TCJA</b>	Tax Cuts and Jobs Act
<b>TDC</b>	Taxpayer Digital Communications
<b>TE/GE</b>	Tax Exempt & Government Entities
<b>TFA</b>	Taxpayer First Act
<b>TIGTA</b>	Treasury Inspector General for Tax Administration
<b>TIN</b>	Taxpayer Identification Number
<b>TMF</b>	Technology Modernization Fund
<b>TPNC</b>	Taxpayer Notice Code
<b>TPP</b>	Taxpayer Protection Program
<b>TY</b>	Tax Year
<b>UWR</b>	Unified Work Request
<b>VDP</b>	Voluntary Disclosure Practice
<b>VITA</b>	Volunteer Income Tax Assistance
<b>VSD</b>	Virtual Service Delivery
<b>W&amp;I</b>	Wage & Investment
<b>WMAR</b>	Where's My Amended Return



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